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U.S. House
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U. S. House of Representatives

CONTESTED-ELECTION CASE

OF

BERNARD P. BOGY

V.

HARRY B. HAWES

FROM THE

ELEVENTH CONGRESSIONAL DISTRICT OF MISSOURI

WASHINGTON
GOVERNMENT PRINTING OFFICE
1921

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CONTESTED-ELECTION CASE

OF

BERNARD P. BOGY v. HARRY B. HAWES,

FROM THE

ELEVENTH CONGRESSIONAL DISTRICT OF MISSOURI.

NOTICE OF CONTEST.

To HARRY B. HAWES,
The above-named contestee:

Take notice that I, Bernard P. Bogy, hereinafter referred to as contestant, hereby inform you, the said Harry B. Hawes, hereinafter referred to as contestee, that I, the said contestant, and you, the said contestee, having been opposing candidates for the office of Representative in Congress from the eleventh congressional district of Missouri at the general election held by the qualified voters of the said district on the 2d day of November, 1920, for the election, among other officers, of a Representative in Congress from the said eleventh congressional district, and you, the said contestee, having been declared duly elected to the said office by the board of election commissioners of the city of St. Louis, Mo., at the official canvass and count of the returns made by the judges and clerks of election to the said board of election commissioners on the 19th day of November, 1920, and you having received the certificate of election to the said office, I, the said contestant, do hereby contest your election to the office of Representative in Congress from the eleventh congressional district of the State of Missouri.

You are further informed that I will present my said contest to the House of Representatives of the Sixty-seventh Congress of the United States when the same shall first come into session, in the city of Washington and District of Columbia, and will thereafter prosecute the same to conclusion.

I further state that at the time of the said election, and at all the times herein mentioned, I did possess, and am now possessed of all the qualifications prescribed by law to enable me to hold the office of Representative in Congress, and that I am, and for more than five years next preceding the day of the said election have been a duly qualified voter of the State of Missouri, and at the time of the election I was, and now am a male citizen of the United States and the State of Missouri, over the age of 25 years, and a citizen of the United States for more than 10 years next preceding the date of the said election.

I further state that on the 2d day of November, 1920, a general election under the laws of the State of Missouri was held in the city of St. Louis, and elsewhere in the said State, for the election of public officers, among them Representatives in Congress, and particularly a representative to the sixty-seventh Congress of the United States from the eleventh congressional district of Missouri, I having theretofore been duly and legally nominated as a candidate for the office of representative in Congress from the eleventh congressional district of Missouri by the Republican Party, and you prior to the said election having been so nominated by the Democratic Party as a candidate for the said office; and that as a result of the official canvass and count made by the board of election commissioners of the city of St. Louis of the returns made to them by the judges and clerks of election of the various voting precincts of the city of St. Louis in the eleventh congressional district of Missouri, it was declared and proclaimed by them on November 19, 1920, that you, the said contestee, had received 35,726 votes of all the votes cast at the said election in the said congressional district for the said office, and that I, this contestant, had received a lesser number of votes, to wit, 33,359 votes at the said election for said office.

I further state that afterwards, and as a result of the said canvass of said returns by the board of election commissioners as aforesaid, you, the said contestee, were, on November 19, 1920, proclaimed and declared by the said board of election commissioners to have been elected to the said office of Representative in Congress from the eleventh congressional district of Missouri, and that a certificate of election to the said office was executed and delivered by the said board of election commissioners to you; that you having accepted the said certificate now claim to be entitled to have and to hold the said office; but that, although the said board of election commissioners of the city of St. Louis has declared the returns as aforesaid and in favor of you, and has awarded you a certificate of election to the said office, this award is erroneous and wrong, and that the true vote was otherwise and was in favor of me, the contestant; and I further say that at said election I received more legal and lawful votes for election to the office of Representative in Congress from the eleventh congressional district of Missouri than were cast for you, the said contestee, or for any other candidate; and that I was duly and lawfully elected to the said office at the said election and thereby became and am now entitled to have and to hold the said office for and during the term thereof.

For specification of the various grounds and facts upon which I deny the correctness of the declaration aforesaid of the board of election commissioners of the said city of St. Louis, and of the returns of the judges and clerks of the various voting precincts in the said eleventh congressional district of Missouri concerning said election for the said office, and for statements and reasons why I claim the said office for myself during the term thereof, I allege that I will, and do hereby, contest your election upon the following grounds and facts, which I will prove in support of my said contest, to wit:

(1) That although according to the canvass of returns of votes cast at the said election as published and declared by the said board of election commissioners of the city of St. Louis it appears that you, the said contestee, received a plurality of 2,134 votes in the said eleventh congressional district of Missouri over the number of votes cast therein in favor of me, the contestant, yet when all the legal votes cast for me at the said election shall have been properly counted and all the false, fraudulent, and irregular ballots cast for you, the said contestee, and heretofore by the board of election commissioners accepted and counted for you have been rejected it will appear that I, the contestant, was duly elected to the office of Representative in Congress from the eleventh congressional district of Missouri by a large majority of votes legally cast at the said election in the said city and in the said congressional district for the office in question.

(2) That the judges and clerks of election in each and every one of the voting precincts within the said eleventh congressional district rejected proper and legal ballots proffered by duly qualified legal voters, and placed the same in an envelope marked " rejected ballots " and returned the said ballots to the board of election commissioners of the city of St. Louis without counting the same; that the said board of election commissioners, being at, preceding, and after the said election the acting, returning, and canvassing board of the said city and of the said congressional district, and that of the ballots so rejected by the judges and clerks of election as aforesaid at least 500 thereof were cast in favor of me, the contestant, and were proper and legal ballots for me, and should have been counted for me, but were not so counted.

(3) That a large number of lawful voters of the said eleventh congressional district, to wit, about 500, duly registered according to law and entitled to vote at the said election, offered their respective ballots at their proper voting places according to law, which said ballots were marked and cast in favor of the election of me, the contestant, to the office aforesaid, which said ballots were further delivered to, received, and accepted by the judges of election then acting at the various polling places aforesaid, and were by them duly deposited in the ballot boxes, but which said ballots were, nevertheless, by the judges of election thrown out and rejected for the alleged reasons that in some immaterial respects the said ballots were irregular or improperly marked, or because my name was in some immaterial respect illegible or poorly written upon or inserted in the said ballots; and that all the said ballots in this specification mentioned should have been counted, cast up, and returned for me, whereas in truth and in fact they were not so counted or returned.

(4) That at the election aforesaid the judges and clerks of election, then acting at the various polling places in the said congressional district, did not correctly count the lawful ballots cast at the said election for the office aforesaid, and did not correctly certify and return to the board of election commissioners the true and proper statement of the actual number of lawful votes cast at the said election for me, the contestant, but on the contrary did count and return in favor of you, the contestee, a total of about 3,000 votes above the number of lawful and actual ballots which were at the election really cast for you.

(5) That at the said election for the office aforesaid the judges and clerks of election, then acting in the various voting places in the said congressional district, did not correctly count and return the legal ballots cast in the several precincts thereof for the office in question, but on the contrary counted and returned in favor of you, the contestee, about 3,000 ballots which were in truth and in fact cast in favor of me for the said office and should have been counted and returned for me, the contestant, all of which ballots so counted and returned as ballots for you should have been deducted from the total number of votes credited to you in the abstract of votes cast at the said election, and added to the number credited to me thereon.

(6) That in all of the several voting precincts in the said congressional district there were cast by duly qualified voters 3,000 votes in favor of me, the contestant, all of which said votes the judges and clerks, acting in the several voting precincts thereof, did wrongfully and erroneously fail, neglect, and refuse to count, return, and certify as votes for me, the contestant.

(7) That in the several voting precincts in the said congressional district there were abstracted and taken from the ballot boxes, destroyed, and made away with, a great number of votes, to wit, about 3,000 ballots, which were lawfully cast in favor of me, in place of which ballots so abstracted, destroyed, and made away with there were substituted ballots in favor of you, which said ballots were, by the judges and clerks of election in the said several voting precincts, counted and returned as legal and proper votes for you, whereby I was deprived of a great number of votes which should have been counted and returned for me, and you were given advantage of a great number of votes which were not in fact cast for you and which you were not entitled to have counted and returned for you.

(8) That the judges and clerks of election in each of the voting precincts of the said congressional district failed to number each ballot in the order in which it was received from the voter, and also failed and neglected to enter the name of the voter and the number of his ballot opposite the name of the voter in the poll book, as required by section 6220 of the Revised Statutes of Missouri of 1909, and the said judges and clerks of election deposited in the ballot boxes a total number of ballots, to wit, about 500, that were not so numbered and the names of the voters of which were not entered upon the poll books, and that the said ballots were cast for you, the contestee, and included and counted in the number of votes certified by the judges and clerks of election to the board of election commissioners for you, the contestee, whereas in truth and in fact they should not have been so counted.

(9) That in each of the several voting precincts in the said congressional district a large number of duly qualified electors, averaging about 25 in each precinct, who were present at the said several voting places for the purpose and intent of casting their ballots for me for the office in question, were not allowed or permitted by the judges and clerks of election, then and there acting, to cast their votes, but were driven away from the said voting places or not permitted to enter the same, so that they were totally deprived of the right of voting for a Representative in Congress from the eleventh congressional district of Missouri, whereby I was wrongfully deprived of 1,000 votes.

(10) That a large number of duly registered and qualified voters who resided in the said congressional district, to wit, about 1,000, voted for me and the candidates on the Republican ticket, by casting what is commonly known and called a straight Republican ticket, but the judges and clerks of election of the several voting places in the said district failed and refused to count and return the said votes for me, because there appeared across my printed name on the Republican ticket a small or fine line, but upon which neither your name, nor that of any other person was written below my name on the said ballots; and the said judges and clerks of election contended that such ballots were what are known and commonly called scratched Republican ballots; that it was not the intention of the persons casting such ballots to vote for you, and the said line

which was drawn across my printed name was not made, drawn, or written by any such voters, but was made, drawn, or written by some person having custody or control of the said ballot boxes prior to or immediately after the said election, and that thereby I was deprived of at least 1,000 legal and lawful ballots which were in fact cast for me.

(11) That in each and every voting precinct of the said congressional district the judges and clerks of election improperly and illegally counted for you a large number of ballots, to wit, about 25, which were in truth and in fact ballots and votes for me, the contestant, for the reason that my name had not been erased from the ballot in the manner and form required by section 5900 of the Revised Statutes of Missouri of 1909.

(12) That in each of the said voting precincts of the said congressional district 10 ballots were folded together, all of which ballots so folded were wrongfully and improperly counted for you, the contestee.

(13) That in each of the voting precincts of the said congressional district the judges and clerks of election permitted or suffered persons to be within the polling places without warrant or authority of law so to do, and permitted them while there to electioneer or solicit votes in favor of you and against me, and that in many of the polling places in the said congressional district the judges themselves electioneered for or solicited votes in behalf of you and persuaded voters to cast their ballots in your favor.

(14) That in all of the voting precincts of the said congressional district one or more persons were permitted to solicit votes or electioneer for you and against me within 100 feet of the polling places, contrary to the laws of the State of Missouri, and were permitted to have and maintain signs, placards, and posters soliciting votes for you in or about the said polling places, and that by reason of the said matters and things I was deprived of a total of about 1,000 votes.

(15) That in all of the voting precincts of the third and fourth wards, and in some of the polling places of the nineteenth, twentieth, and twenty-seventh wards of the said city of St. Louis, all within the said eleventh congressional district of Missouri, a large number of persons, averaging about 25 to each precinct, who had gone to the said polling places to cast their votes for me, the contestant, were by the judges and clerks then and there acting therein, or with the knowledge and consent of such judges and clerks, intimidated against so doing and were driven or frightened away from the polling places, whereby I was deprived of a large number of votes, to wit, about 1,500.

(16) That in all of the voting precincts of the said congressional district the judges and clerks of election then and there acting therein, made out ballots for alleged illiterate voters, without first ascertaining if the said voters were illiterate and without ascertaining for whom the said voters desired to vote, and that the said judges and clerks then procured the ballots as made out by them to be cast, and thereafter wrongfully counted the ballots for you, the said contestee.

(17) That you, the said contestee, were not on the 2d day of November, 1920, and are not now possessed of the qualifications required for the office of Representative in Congress from the eleventh congressional district of Missouri.

(18) That in the various voting precincts of the said congressional district there were cast a total of about 500 votes for me for the office in contest on the Socialist ticket, which were not counted for me as of right they should have been, which said votes were cast for me by writing upon the ballot of the Socialist Party, under the proper caption, my name.

(19) That in the various voting precincts of the said congressional district there were cast a total of about 500 votes for me for the office in contest on the Farmers' Labor ticket, which were not counted for me, as of right they should have been, which said votes were cast for me by writing upon the ballot of the Farmers' Labor ticket, under the proper caption, my name.

(20) That in all of the voting precincts of the said congressional district about 100 votes purporting to have been cast at the said election by absentee voters in favor of you, the contestee, at the said election, under the provisions of the act of March 14, 1913, were received and counted by the board of election commissioners in your behalf as a portion of the vote of the said election, when in truth and in fact the same should not have been so received and counted, for the reasons that the persons casting the same were not employees of railroad companies, nor traveling salesmen, nor students of any college of the State, and were not unavoidably detained by their duties; occupation or business and kept away from the city of St. Louis on the day of the said election; that the

said alleged absentee voters did not make and subscribe the affidavit required by section 2 of the said act; that the judges and clerks of the said election precincts did not indorse upon the said purported ballots their names, as required by the said act, and that the said ballots were not inclosed in an envelope upon which was indorsed the matters, things, and statements required by the act before the same were transmitted to the board of election commissioners of the city of St. Louis, Mo., nor were the same transmitted to the said board of election commissioners of the city of St. Louis in the manner and form required by the said act; by reason of all of which facts none of the said ballots should have been received or counted by the board of election commissioners of the said city of St. Louis in your favor; and that the names of the persons so voting for you, but who were in fact disqualified from voting at the said election as absentee voters, are at this time unknown to me, the contestant, and so can not be inserted herein, but proof thereof will be made as required by law upon a hearing of this contest.

(21) That a large number of illegal voters, or so-called repeaters, were brought into the city of St. Louis, and into the eleventh congressional district of Missouri, from various cities, towns, and villages in Missouri and other States, to vote at the said election for you, the contestee, and other candidates on the Democratic ticket; that such repeaters went about from voting place to voting place in the said congressional district at the said election and voted repeatedly for you, the contestee; that said repeaters voted upon names falsely and fraudulently registered, or fictitious names, or names of dead persons, or names of persons who had moved, or the names of persons who were lawful voters properly registered but had failed to vote at said election; that the said repeaters cast at least 2,000 votes for you, the contestee, in the said election, and that said votes were counted and returned in your favor; that none of the said repeaters had any legal right to vote at the said election for the office in contest, and that the votes cast by them were illegal, fraudulent, and void and should be deducted from the votes cast up, counted, and returned for you; that the true names of the said fraudulent voters or repeaters are unknown to me and so can not be inserted herein, but that proof of the identity of such persons and of the names upon which they voted at the said election will be made at the hearing of this contest.

(22) That not less than 100 duly registered and qualified voters of the said eleventh congressional district, all of whom were entitled to vote at the election aforesaid, and who were either employees of railroad companies, traveling salesmen, students in colleges of the State, or for other reasons unavoidably absent from the city of St. Louis, Mo., by reason of their duties, occupations, or business on the day of the election aforesaid, presented themselves before the judges of election on that day in the various election precincts of the State, and having made the affidavit prescribed by section 2 of the act of March 14, 1913, thereupon proceeded to cast and deliver to said judges of election in the said various election precincts their several ballots at and for the election aforesaid, and for and in behalf of me, the said contestant, for the office now in contest; and said ballots, having been thereupon endorsed in the manner and form required by the law of the State of Missouri, were transmitted as required therein to the board of election commissioners of the city of St. Louis, Mo., and by them received prior to 12 o'clock noon of the first Saturday next after the day of the said election; but notwithstanding the matters and things aforesaid the same were rejected by the said board of election commissioners of the city of St. Louis, Mo., and were not counted in my behalf, as they should have been.

(23) That there was expended by you, or by other persons in your behalf with your knowledge and consent, for the purpose of promoting and procuring your election to the office in contest, a sum of money far in excess of that permitted to be so spent by the laws of the State of Missouri and the laws of the United States, and that thereby your alleged election became and is void under the said laws, and you became and are disqualified from holding the said office.

(24) That in the said eleventh congressional district a large number of persons, to wit, about 2,000, were permitted to register as electors who were not legally qualified to register, because they had not resided in the State of Missouri for one year next preceding the said day of election, nor in the said eleventh congressional district, nor in the said city of St. Louis 60 days before the said election, all of which persons so wrongfully registered voted for you at the said election for the office now in contest, and their votes so cast were

wrongfully counted for you, the said contestee; that the names of some of the persons so registering and voting, so far as the same have been now discovered, and whose votes were cast and counted for you, and who were so disqualified from registering and voting, and their respective addresses appearing on the registration books, are as follows, to wit:

Name.	Address.
Ward 4, precinct 1:	
Wm. Beard	1320 North Broadway.
Jas. Early	Do.
John Foy	Do.
John Flory	Do.
Bert Sexton	Do.
Jas. E. Wilson	Do.
Neal McDaniel	Do.
Aug. Butteger	Do.
Phil Doelger	Do.
Wm. Frick	Do.
E. A. Gowen	Do.
Max A. Guenther	Do.
Otis Gaines	Do.
Mamie Hays	Do.
W. W. Hays	Do.
Con. Higgins	Do.
Arthur Holland	Do.
John Jacobs	Do.
W. J. Kraemer	Do.
Steward McMickle	Do.
Thos. O'Hearn	Do.
J. J. Quinn	Do.
Jas. Reedy	Do.
Chas. F. Seiler	Do.
Annie Seiler	Do.
Herman Schneider	Do.
Edw. Walker	Do.
C. G. Andrews	419 Wash Street.
E. T. Boland	Do.
Chas. Baker	Do.
Theo. A. Braun	Do.
A. S. Brown	Do.
Mike Burke	Do.
Pw. Barth	Do.
Wm. Bell	Do.
Tony Baitesasky	Do.
H. W. Bostwick	Do.
Michael Carroll	Do.
Pat Cain	Do.
Edw. Coughlin	Do.
Jas. Connor	Do.
John Cuddy	Do.
Wm. Coyne	Do.
Wm. Casey	Do.
Chas. Cook	Do.
Sam Childs	Do.
J. P. Carroll	Do.
H. S. Coleman	Do.
Edw. De Dieman	Do.
Edw. Dugger	Do.
W. W. Davidson	Do.
Edw. M. Dempsey	Do.
Sam Farbstein	Do.
John P. Finnegan	Do.
Thos. Flannagan	Do.
John J. Gleason	Do.
Earl Gerbe	Do.
Ben Getzler	Do.
Geo. Grus	Do.
Aug. Grus	Do.
Ed Gleason	Do.
J. Grumm	Do.
Wm. Gibbons	Do.
C. E. Haggerty	Do.
John Hogan	Do.
J. E. Hannigan	Do.
Geo. Happe	Do.
W. W. Hohman	Do.
W. Hall	Do.
John Hay	Do.
Fred Hurtman	Do.
Wm. Hunt	Do.
Fred Harvey	Do.
Jas. Hannigan	Do.
Otto Kahlow	Do.
James Kennedy	Do.
Chas. Kleinsmidt	Do.
Ward 4, precinct 1—Contd.	
Thos. Kervley	419 Wash Street.
Jas. Rank	Do.
Jas. Lowe	Do.
Thos. Lavin	Do.
John Lillard	Do.
Jas. McClelland	Do.
Mike McClain	Do.
Jesse McDaniel	Do.
Tim McCann	Do.
Daniel McGrady	Do.
Chas. Martin	Do.
Barney Messmer	Do.
John Mullen	Do.
Robt. J. Morrison	Do.
John Mills	Do.
Louis Mulconery	Do.
Emil J. Moeller	Do.
James Murray	Do.
A. Noonan	Do.
Thos. O'Reilly	Do.
Wm. O'Brien	Do.
Michael O'Connell	Do.
Geo. Orrick	Do.
Walter Poole	Do.
John P. Pancarst	Do.
Ed Rodgers	Do.
Michael Rohe	Do.
John Rines	Do.
Edw. Schnuette	Do.
Richard Stapleton	Do.
Felix Stratton	Do.
Robt. Smith	Do.
Wm. Vogt	Do.
Ralph Wilson	Do.
James Wilson	Do.
Chas. Wienkler	Do.
Edw. Wilcox	Do.
Jos. Williams	Do.
John Walsh	Do.
James Whalen	Do.
Samuel Wilson	Do.
Aug. Zimmer	Do.
Ward 4, precinct 2:	
Patrick Slattery	1508 North Eleventh Street.
Steve Pecker	Do.
W. E. Edgar	Do.
Beverly Brown	Do.
L. W. Pinson	Do.
J. L. McGirl	Do.
Steve Aring	Do.
Leopold Raymond	Do.
Richard Ford	Do.
Emil Heisner	Do.
John Murphy	Do.
Wm. E. Carrigan	Do.
Jos. M. O'Laughlin	Do.
Frank Tangeman	Do.
Ward 4, precinct 3:	
W. H. Lloyd	1847 North Broadway.
Geo. Rowe	Do.
Hobart Reiger	Do.
John Reagan	Do.
John O. Flaherty	Do.
James Halpin	Do.
John McLaughlin	Do.
Frank Hyde	Do.
Thos. Erwin	Do.
Simon J. Doyle	Do.
John Golden	Do.
H. B. Carroll	Do.
Frank Griffin	Do.
John Clancy	Do.
Frank Whalen	Do.
Fred Kramer	Do.
John Hack	Do.

Name.	Address.
Ward 4, precinct 3—Contd.	
Wm. Dory	1947 North Broadway.
Ward 4, precinct 4:	
Louis Brown	1400 North Ninth Street.
Earl Dowling	1408 North Ninth Street.
John Anderson	Do.
Frank Egan	1123 North Eighth Street.
Joseph Carr	Do.
Wm. Kenny	Do.
James Whalen	Do.
Matthiw Noonan	1437 North Eighth Street.
Matthiw Noonan	Do.
John Malon	825 O'Fallon Street.
Ed Purke	813 O'Fallon Street.
Ward 4, precinct 5:	
Joe Dee	1311 Tenth Street.
Ben Darby	1410 Tenth Street.
Wm. Leverling	Do.
Joe O'Toole	Do.
Wm. McQuillen	1442 Eleventh Street.
Jos. O'Donnell	Do.
Mike McGill	Do.
John Higgins	Do.
Eug. McGill	Do.
Jas. J. Moore	1448 Eleventh Street.
John J. Moore	Do.
Fred Smith	1402 Twelfth Street.
Frank Miller	Do.
Edw. Ford	Do.
Edw. Hollahan	Do.
Ben Horricks	908 Cass Avenue.
Miss Creely	Do.
Ben Partlow	1000 Cass Avenue.
Rob. Walsh	Do.
Harry Chew	Do.
Chas. Owens	Do.
Arnold Winter	Do.
Fred Erbe	1116 Cass Avenue.
Rich Ryan	1118 Cass Avenue.
Eug. Martin	Do.
Lewis Floyd	913 Biddle Street.
Bert Cross	Do.
Joe Lewis	Do.
Ward 4, precinct 6:	
Geo. Davidson	1206 Twelfth Street.
John Oswald	Do.
Wm. Ziegler	Do.
Adam Matus	Do.
Mike Hoy	Do.
Wm. Conners	Do.
Jas. Haley	1236 High Street.
Thos. Stanton	Do.
Louis Franke	Do.
Jos. Dunbar	1238 High Street.
Ed Devine	Do.
Harry Moore	Do.
Louis Saving	1240 High Street.
Jim Topping	Do.
Nellie Schmidt	Do.
Louis Coons	Do.
Mike Carmody	Do.
Wm. Holden	Do.
Andrew Smith	Do.
Delia Walsh	Do.
Thomas Smith	1110 O'Fallon Street.
Wm. Fowler	Do.
Thos. McGary	Do.
James Lovett	Do.
Ward 4, precinct 7:	
Herman Bartels	1210 Cass Avenue.
John Gaynor	Do.
Joe Kolwaski	Do.
Thos. Donnely	Do.
Frank Weiss	Do.
John Cleary	Do.
Michael Flynn	Do.
Joe Lester	Do..
Thos. Moran	1216 Cass Avenue.
Wm. Schneider	Do.
Ed Lowes	Do.
John Reardon	Do.
Ward 4, precinct 7—Contd.	
Elizabeth Miller	1226 Cass Avenue.
Jas. Tracy	Do.
Irene Miller	Do.
Gertrude Tracy	Do.
Lawrence O'Brien	Do.
David Byrne	Do.
John Bakersmith	Do.
Pas Miller	Do.
Wm. Taylor	1418 Cass Avenue.
Clarence Jackson	Do.
Geo. Gray	Do.
John Kent	Do.
Frank Drake	1207 O'Fallon Street.
Geo. Steffel	1209 O'Fallon Street.
Dan Ryan	1416 O'Fallon Street.
Jos. Wallace	1413a Twelfth Street.
Clifford Gibson	Do.
Frank Perger	1413 Twelfth Street.
Edw. Mokwa	Do.
Frank Moore	Do.
Jas. Keating	1439 Twelfth Street.
Edw. Wilcox	1304 High Street.
Miller Wendel	1308 High Street.
Jos. Seargent	1324 High Street.
Walter Brown	1322 Thirteenth St.
Thomas Burke	1444 Thirteenth St.
Kate Ryan	1413 Thirteenth St.
Chas. McLain	1427 Thirteenth St.
Ed Leonard	Do.
Al Jacobs	Do.
Ben Miles	1429 Thirteenth St.
John Donohu	1225 Fourteenth St.
Patrick Gallagher	1425 Fourteenth St.
John Harvis	1447 Fourteenth St.
Joe Kent	Do.
Christ Dunn	1402 Blair Avenue.
John Dunwert	Do.
Frank Hommann	Do.
Joe Able	Do.
Chas. Chew	Do.
Mae Able	Do.
Wm. Mangan	1412 Blair Avenue.
Dinnis Sheahan	Do.
John Lyons	Do.
Wm. Smith	Do.
Ely Brody	Do.
Christ Detweiler	1422 Blair Avenue.
Joe Allen	1430 Blair Avenue.
Maggie Jordan	Do.
Harry Wilson	Do.
Ward 4, precinct 8:	
Edw. Hall	1113 Cass Avenue.
John Will	Do.
Fred Woods	Do.
Mary Winn	1203 Howard Street.
James Long	1302 Howard Street.
Harry Mangels	1307 Howard Street.
Eda Bartel	1309 Howard Street.
E. Johnson	1115 Brooklyn Street.
Robt. Dietz	1715 North Thirteenth Street.
R. Dietz	Do.
Mike Hardy	1600 North Fourteenth Street.
Jos. Kemp	Do.
Fred Miller	Do.
John Miller	1608 North Fourteenth Street.
Joe Clark	1612 North Fourteenth Street.
Chas. Levene	1616 North Fourteenth Street.
Chas. Kelly	Do.
James Easton	1710 North Fourteenth Street.
Joe Brown	Do.
John Beck	Do.
Belle Brown	Do.
Thos. McCarthy	Do.
John Murphy	1904 North Fourteenth Street.
Frank Brooks	1914 North Fourteenth Street.
William Loudin	Do.
Wm. Roberts	Do.

Name.	Address.
Ward 4, precinct 8—Contd.	
Edw. Betzer	1914 North Fourteenth Street.
Ward 4, precinct 9:	
Harry Murphy	1517 North Fourteenth Street.
Harry Barrett	Do.
Jerry Ryder	1514-2 North Fifteenth Street.
Henry Clark	1519a North Fifteenth Street.
Walter Manker	1544 North Sixteenth Street.
William Jako	1606 North Sixteenth Street.
Ward 4, precinct 10:	
Lewis Becker	1436 Cass Avenue.
Jos. McKinnon	Do.
Thos. Brand	1500 Cass Avenue.
James Nemo	Do.
Wm. Ryan	Do.
Joe Davis	1504 Cass Avenue.
Robt. Joy	Do.
John Higgins	1506 Cass Avenue.
James Shaw	Do.
Jas. O'Neil	1508 Cass Avenue.
James Clark	1512 Cass Avenue.
Jack Curley	Do.
Mike McDonald	Do.
Jos. Carroll	1514 Cass Avenue.
Dan Foley	Do.
Geo. Mansur	Do.
Ira McKee	1516 Cass Avenue.
Frank Tobin	Do.
Tom Hall	1518 Cass Avenue.
Otto Kline	Do.
Albert Turner	1523 Cass Avenue.
John Murphy	1528 Cass Avenue.
Frank Hall	1530 Cass Avenue.
Bart Terry	1532 Cass Avenue.
Dan Decker	1415 Blair Avenue.
Annie Bailey	1310 North Fifteenth Street.
Ruth Gill	Do.
Lizzie Doyle	Do.
J. F. Keith	Do.
Frank Meaney	Do.
Thos. Meyer	Do.
Martin Foley	1456 O'Fallon Street.
Tom Smyth	Do.
Ward 4, precinct 11:	
John Shea	1433 Sixteenth Street.
Jack Britt	Do.
George Harris	Do.
Ben Sutton	1437 Sixteenth Street.
Fred Miller	1524 Sixteenth Street.
L. Thompson	1533½ Sixteenth Street.
Jas. Gilbert	1440 Seventeenth Street.
Louis Miller	Do.
Patrick Short	Do.
Dan Clark	1447 Seventeenth Street.
Geo. Damme	Do.
Chas. Slattery	Do.
John Walsh	Do.
Clement Gunn	1449 Seventeenth Street.
John Bopp	Do.
Leonard Martin	1526 Seventeenth Street.
Ed Dee	1529 Seventeenth Street.
Tom Curry	Do.
Thomas Davis	1408 Eighteenth Street.
Dan New	Do.
Roy Robison	Do.
Edw. Weber	Do.
Sam Scott	1418 Eighteenth Street.
Howard Cox	1528 Eighteenth Street.
Chas. Powers	Do.
Ward 4, precinct 11—Contd.	
Henry Fisher	1701 O'Fallon Street.
Joe Hoffman	Do.
John Smith	1705 O'Fallon Street.
Edw. Smith	Do.
Harry Cohn	1709 O'Fallon Street.
Geo. Frank	1715 O'Fallon Street.
John Anglin	1717 O'Fallon Street.
Harry Price	1604 Cass Avenue.
Frank English	1700 Cass Avenue.
Albert White	Do.
John Mills	Do.
Henry Meyer	Do.
Ben Geitz	1701 Cass Avenue.
Clement Geary	Do.
Peter Rabbitt	Do.
Phil May	Do.
Thos. Bresnan	1702 Cass Avenue.
Raymond Dooley	Do.
Annie Downs	Do.
Thos. Robison	Do.
Gus Stark	Do.
Ben Tessmen	Do.
Willie Harris	Do.
Jessie Robison	Do.
Katherine Ruby	Do.
Edw. O'Connor	1704 Cass Avenue.
Lester Crow	Do.
John Ahern	1807 Cass Avenue.
Ward 4, precinct 12:	
Ernst Turner	1207 Sixteenth Street.
Walter Martin	Do.
Mike Lynch	1114 Eighteenth Street.
James Parker	Do.
James Collins	1121 Eighteenth Street.
Edw. Hart	1124 Eighteenth Street.
Thom Toomey	Do.
Margaret Dwyer	1125 Eighteenth Street.
Harry Barron	Do.
Thomas Murphy	Do.
James Burke	Do.
John Drennan	1127 Eighteenth Street.
Carl Hanson	Do.
Wm. Pieper	Do.
Harry Bell	1635 Carr Street.
Roy Smith	1709 Carr Street.
John Burns	1735 Carr Street.
Thomas Miller	1805 Biddle Street.
Gus Miller	Do.
Edw. Welby	Do.
Thos. Walsh	Do.
Geo. Green	1740a O'Fallon Street.
James Woods	Do.
Ward 4, precinct 13:	
John Steffen	1837 O'Fallon Street.
Harry Londo	Do.
Jno. Gregory	Do.
Geo. Weber	1906 O'Fallon Street.
David Evans	1812 Cass Avenue.
Anthony Powers	1315 Hogan Street.
Thos. Dawe	1440 Hogan Street.
Ward 4, precinct 15:	
Thos. Carey	2100 O'Fallon Street.
Jas. Ford	Do.
Edw. Rielly	Do.
Wm. Engler	Do.
Harry McGauly	Do.
Michael Murphy	Do.
Wm. Korte	2106 O'Fallon Street.
Patrick Grady	Do.
Jno. Farrell	2114 O'Fallon Street.
Mark Davis	Do.
Jno. Hays	1322 North Twenty-first Street.
Gilbert Wills	1326 North Twenty-first Street.
Harry O'Brien	1428 North Twenty-first Street.
Thos. O'Connor	Do.

(25) That in many of the voting places of the said eleventh congressional district, in the third, fourth, twentieth, twenty-sixth, and twenty-seventh wards, after the votes cast therein at the said election had been counted, totaled and entered upon the poll books of said precincts, the said entries and totals of votes cast were fraudulently altered so as to make it appear that more votes had been cast for you than for me for the office in contest, whereas in truth and in fact a greater number of votes were cast for me than for you; and that thereby I was wrongfully deprived of a total of 1,000 votes.

(26) That in various of the voting precincts of the said eleventh congressional district, and particularly in the seventh precinct of the twentieth ward, ballots were furnished to the voters which had been prepared before the opening of the polls by scratching from the Republican ballot my name and inserting in lieu thereof your name, all of which said alterations were not noticed by the voters, and a large number of voters who went to the said polling places with the intent and for the purpose of voting for me were thereby caused to vote for you, by reason of which said facts there were counted for you 1,000 ballots which should not have been so counted.

(27) That in many of the voting precincts of the eleventh congressional district, and particularly in the seventh precinct of the fourth ward, the judges of election told intending voters who came to the said polls to vote for me and other candidates on the Republican ticket, not to vote the said ticket because there was printed thereon as a candidate for office the name of a negro, and that the said judges thereby wrongfully induced such persons not to vote for me, whereby I was deprived of 500 votes, and the same were wrongfully given to you.

And you are further notified that in accordance with the returns made by the judges and clerks of election in the various voting precincts of the said eleventh congressional district, from which said returns an official canvass was made by the board of election commissioners of the city of St. Louis, it appears that you, the said contestee, received 35,726 votes in all the precincts of the said district, and that I, the said contestant, received in all of the precincts of the said district 33,359 votes, whereas in truth and in fact you received only 33,725 legal and lawful votes, and I, the said contestant, received 35,360 legal and lawful votes, thus giving to me a plurality of 1,635 votes; and that accordingly I was duly and legally elected to the said office of Representative in Congress from the eleventh congressional district of Missouri, and am entitled to the said office and to the emoluments thereof, and that I will proceed with this my contest of the said office according to the laws of the United States and of the State of Missouri in such case made and provided.

BERNARD P. BOGY,
Contestant.

STATE OF MISSOURI,
City of St. Louis, ss:

Bernard P. Bogy, of lawful age, being duly sworn, on his oath says that he has read the above and foregoing notice of contest, and that the matters and things therein set forth are true, according to the best of his knowledge, information, and belief.

BERNARD P. BOGY.

Subscribed and sworn to before me this 14th day of December, 1920. My term expires May 5, 1922.

[SEAL.]

M. E. RACKERBY,
Notary Public, City of St. Louis, Mo.

PROOF OF SERVICE.

STATE OF MISSOURI,
City of St. Louis, ss:

I, the undersigned, being the duly elected, qualified, and now acting sheriff of the city of St. Louis, Mo., do hereby certify that I delivered a true copy of the foregoing notice of contest, as furnished to me by the contestant, to the within named Harry B. Hawes in the city of St. Louis, Mo., on the —— day of December, 1920.

—— ——,
Sheriff of the City of St. Louis, Mo.

CONTESTEE'S ANSWER.

To Bernard P. Bogy,
The Above-named Contestant:

I, Harry B. Hawes, contestee, having received on the 18th day of December, 1920, a notice from you, Bernard P. Bogy, contestant, that you will contest my election as a Member of the Sixty-seventh Congress of the United States of America, do hereby make and serve upon you, said contestant, my following answer to your said notice of contest:

Contestee admits that he and said contestant were opposing candidates of the Democratic Party and of the Republican Party, respectively, for the office of Representative in the Sixty-seventh Congress of the United States of America from the eleventh congressional district of Missouri, at the general election held in said district on the 2d day of November, 1920; and admits that contestee was declared elected upon the official returns of the votes cast at said election; and that contestee was declared duly elected to said office by the board of election commissioners of the city of St. Louis, Mo., and that the certificate of election was issued to said contestee by the secretary of state of Missouri, and that such certificate has been duly filed with the Clerk of the House of Representatives of the Sixty-sixth Congress; and contestee further admits that at said election he received 35,726 votes, a plurality over contestant of all the votes cast at said election in said congressional district for the said office.

Contestee, for further answer to said notice of contest, denies each and every allegation in said notice of contest contained and not hereinabove expressly admitted; and in this behalf contestee denies each and every allegation contained in each of the several paragraphs of said notice of contest, assigning contestant's grounds, reasons, and points of contest, and numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, and 27, and any other portion of said notice, as well as the concluding paragraph thereof, as fully and to the same effect as if all the said allegations were herein separately set out in full and separately and specifically denied by contestee.

DESCRIPTION OF DISTRICT.

The contestee, for further answer to said notice of contest, avers that the eleventh congressional district lies entirely within the city of St. Louis and is composed of precincts 1, 2, 3, 4, 5, 6, 7, 8, and 14 of ward 2; all of ward 3, composed of 15 precincts; all of ward 4, composed of 16 precincts; all of ward 18, composed of 18 precincts; all of ward 19, composed of 15 precincts; all of ward 20, composed of 17 precincts; and the following precincts in ward 22: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 16, 17, 18, 19, 20, 21, 22, and 23; all of ward 26, composed of 22 precincts; the following precincts in ward 27: 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, and 38; making a total of 155 voting precincts.

The eleventh congressional district is composed of a long, narrow strip of wards running from the river to the city limits on the west.

In the lower or river wards, working classes of the people reside.

As the district extends west, the character of its population changes, until we find in the western wards a large number of independent voters of means, owning their own homes.

The character of the voters in many of the wards differ.

This district is considered the strong Democratic district of St. Louis, and for over 12 years it has been represented in Congress by a Democrat.

In the election of 1918 the Hon. William L. Igoe was permitted to return to Congress unopposed by a Republican opponent, as the Republican organization, believing in the futility of filing a Republican opponent, permitted the election to go by default.

The fourth ward in this district—in which a specific charge of fraud and corruption is made by contestant against election officials and others—always has been a Democratic ward and consistently returned large Democratic majorities for Democratic candidates on the Democratic ticket.

Following their policy of 1918, the Republican Party committees, in the November, 1920, election, made no special effort to elect the contestant to Congress. Campaign moneys, which were supplied for the election of Republican candidates to Congress in the other districts in Missouri, were withheld from this district. Few, if any, out-of-State speakers were sent into the district by the Republican organization. Its candidate for Congress, contestant, was practically abandoned, and the Republican national organization was notified, long before the date of election, that the district would be carried by the contestee.

Contrasted with the conduct of the Republican organization, the Democratic organization made a special effort in this district. It brought in from other States the Hon. Bourke Cockran, Senator Walsh, Senator Hitchcock, ex-Secretary McAdoo, Hon. Champ Clark, and others. Over 40 political meetings were held, and a special committee was organized in the interests of the Democratic candidates for President and Congress and candidates for State and city offices.

The Democratic meetings were notable for the large numbers attending and the enthusiasm manifested.

Union labor composes a large portion of the population in this district. Contestant Bogy was fought by union labor throughout the district, and it gave its enthusiastic, active support to contestee, Hawes.

In each voting precinct there are two Democratic judges and two Republican judges, two Democratic clerks and two Republican clerks; and, in addition, one Democratic challenger and one Republican challenger. This creates a body of 10 men, divided into five Democrats and five Republicans, who are sworn officers of the State, whose duty it is to ascertain from each voter, first, the fact of his registration; second, to properly number and initial his ballot; third, to deposit the ballot in the ballot box; fourth, to properly record and count such ballot; and, fifth, to make correct return to the board of election commissioners of the city of St. Louis, which board is composed of two Democrats and two Republicans.

Therefore, any charge involving improper counting, fraudulent voting, fraudulent manipulation of ballots, or improper returns, must necessarily attack the honesty and proper official conduct of 10 men in each voting precinct.

As there are 155 voting precincts in the eleventh congressional district, the wholesale charging of intimidation, fraudulent voting, fraudulent counting, and fraudulent returns is an attack upon 1,550 officers of the law.

According to your specification in section 2, you were deprived of 500 ballots cast for you which were marked but not counted; specification 3, 500 ballots rejected because improperly marked; specification 4, that 3,000 votes were not properly credited on the statement sent to the board of election commissioners; specification 5, that 3,000 votes were not properly counted for you; specification 6, that the judges and clerks refused to count 3,000 ballots cast for you; specification 7, that you are entitled to 3,000 ballots which were destroyed and 3,000 fraudulently substituted; specification 8, that 500 ballots were not properly numbered and were counted against you; specification 9, that 1,000 voters were not permitted to cast their ballots; specification 10, 1,000 straight ballots scratched by judges and clerks were lost for you; specification 11, that you lost 25 ballots in each precinct because your name was not printed on the ballots, entailing a total loss of 3,875 ballots; specification 12, that 10 ballots in each of the 155 polling places were wrongly folded and cast against you, loss 1,550 votes; specification 14, 1,000 votes were lost by you because of unlawful solicitation in polling places; specification 15, that 1,500 votes were lost by you because of intimidation by election officials and others; specification 18, that 500 Socialist votes were cast for you which were not counted; specification 19, that 500 Farmer-Labor ballots were cast for you but not counted; specification 20, that the board of election commissioners fraudulently counted 100 absentee votes; specification 21, that 2,000 fraudulent votes were cast by repeaters; specification 22, that 100 votes of absentees which were sent to the election commissioners' office were not counted; specification 24, that 2,000 false registrations which were voted were counted against you; specification 25, that the election officials fraudulently changed 1,000 votes to your disadvantage; specification 26, that you lost 1,000 votes by prepared marked ballots; specification 27, that 500 votes were lost because voters were told that you were responsible for the placing of a negro name upon the ballots.

This remarkable blanket indictment for corruption, fraud, dishonesty, and theft directed against the board of election commissioners of the city of St. Louis and the 1,550 election officials, half of whom are Republicans and half Democrats, makes a total of the frauds claimed by you amounting to 32,125 votes, which is approximately one-half of the total vote cast in the entire district.

You have given no specific instances, no precincts pointed out, no election official names, no incidents described; nothing is furnished the contestee but a general charge directed against election officials and unknown persons, which is therefore not susceptible of contrary proof on the part of contestee.

THE ELECTION.

Contestee states that the election on November 2, 1920, was one of the most quiet, peaceful, and orderly elections ever held in the city of St. Louis (which is witnessed by police reports and newspaper accounts), and the contestee asserts that the blanket charge against these 1,550 election officials is unfounded and false.

The contestee, therefore, demands that contestant point out specifically in his reply the precincts in which such criminal acts charged by him occurred, and that contestant, by name, designate the Republican and Democratic officials engaged in violating the laws of Missouri and corrupting the sanctity of the ballot.

The contestee having had no knowledge or any evidence of any kind of fraud or corruption in any voting precinct in the district brought to his attention, demands that in contestant's reply all allegations of fraud and corruption shall be made clear and specific, so that contestee may be able to properly present the evidence thereon.

Contestee further states that the eleventh cogressional district is composed of 9 wards and comprises 155 voting precincts.

In these voting precincts contestee received more votes than Cox in 139 precincts, ran even with Cox in 9 precincts, ran behind Cox in 7 precincts.

His total majority over Cox in the 155 precincts was 2,384, as shown in the following table, giving the vote for Cox and Hawes and the majority in each precinct:

Cox-Hawes vote and majorities by precincts.

	Total vote.		Majorities.	
	Cox.	Hawes.	Cox.	Hawes.
WARD 2.				
Precinct 1	200	223	....	23
Precinct 2	169	175	....	6
Precinct 3	98	103	....	5
Precinct 4	163	208	....	45
Precinct 5	123	142	....	19
Precinct 6	189	221	....	32
Precinct 7	233	246	....	13
Precinct 8	166	197	....	31
Precinct 14	170	180	....	10
Total	1,511	1,695	....	184
WARD 3.				
Precinct 1	257	264	....	7
Precinct 2	202	202	....	....
Precinct 3	211	220	....	9
Precinct 4	252	251	1	....
Precinct 5	213	226	....	13
Precinct 6	140	143	....	3
Precinct 7	235	240	....	5
Precinct 8	200	205	....	5
Precinct 9	256	263	....	7
Precinct 10	187	213	....	26
Precinct 11	181	190	....	9
Precinct 12	228	223	5	....
Precinct 13	213	220	....	7
Precinct 14	227	263	....	36
Precinct 15	250	256	....	6
Total	3,252	3,379	6	127
WARD 4.				
Precinct 1	235	238	....	3
Precinct 2	308	311	....	3
Precinct 3	166	166	....	....
Precinct 4	233	239	....	6
WARD 4—contd.				
Precinct 5	352	354	....	2
Precinct 6	75	76	....	1
Precinct 7	240	240	....	....
Precinct 8	308	320	....	12
Precinct 9	240	251	....	11
Precinct 10	190	190	....	....
Precinct 11	356	363	....	7
Precinct 12	248	248	....	....
Precinct 13	237	237	....	....
Precinct 14	273	278	....	5
Precinct 15	283	283	....	....
Precinct 16	271	271	....	....
Total	4,015	4,065	....	50
WARD 18.				
Precinct 1	226	243	....	17
Precinct 2	239	256	....	17
Precinct 3	182	212	....	30
Precinct 4	126	154	....	28
Precinct 5	171	176	....	5
Precinct 6	222	240	....	18
Precinct 7	154	164	....	10
Precinct 8	185	198	....	13
Precinct 9	261	265	....	4
Precinct 10	304	311	....	7
Precinct 11	173	177	....	4
Precinct 12	320	319	1	....
Precinct 13	374	380	....	6
Precinct 14	184	184	....	....
Precinct 15	163	172	....	9
Precinct 16	234	258	....	24
Precinct 17	198	208	....	10
Precinct 18	106	124	....	18
Total	3,822	4,041	1	219

Cox-Hawes vote and majorities by precincts—Continued.

	Total vote.		Majorities.	
	Cox.	Hawes.	Cox.	Hawes.
WARD 19.				
Precinct 1	30	29	1	....
Precinct 2	75	84	....	9
Precinct 3	118	122	....	4
Precinct 4	310	317	....	7
Precinct 5	231	217	14	....
Precinct 6	209	211	....	2
Precinct 7	216	219	....	3
Precinct 8	336	343	....	7
Precinct 9	218	232	....	14
Precinct 10	110	128	....	18
Precinct 11	138	171	....	33
Precinct 12	113	216	....	103
Precinct 13	50	57	....	7
Precinct 14	113	124	....	11
Precinct 15	58	59	....	1
Total	2,325	2,529	15	219
WARD 20.				
Precinct 1	122	155	....	33
Precinct 2	242	275	....	33
Precinct 3	369	407	....	38
Precinct 4	275	289	....	14
Precinct 5	240	250	....	10
Precinct 6	448	475	....	27
Precinct 7	391	421	....	30
Precinct 8	327	357	....	30
Precinct 9	294	326	....	32
Precinct 10	312	321	....	9
Precinct 11	301	314	....	13
Precinct 12	242	305	....	63
Precinct 13	248	253	....	5
Precinct 14	215	233	....	18
Precinct 15	331	368	....	37
Precinct 16	303	328	....	25
Precinct 17	218	273	....	55
Total	4,878	5,350	....	472
WARD 22.				
Precinct 1	140	144	....	4
Precinct 2	253	262	....	9
Precinct 3	245	267	....	22
Precinct 4	291	312	....	21
Precinct 5	271	291	....	20
Precinct 6	243	271	....	28
Precinct 7	187	197	....	10
Precinct 8	246	301	....	55
Precinct 9	217	238	....	21
Precinct 10	219	231	....	12
Precinct 16	125	129	....	4
Precinct 17	11	13	....	2
Precinct 18	8	19	....	11
Precinct 19	52	57	....	5
Precinct 20	196	213	....	17
Precinct 21	123	142	....	19
WARD 22—contd.				
Precinct 22	199	206	....	7
Precinct 23	172	180	....	8
Total	3,198	3,473	....	275
WARD 26.				
Precinct 1	121	126	....	5
Precinct 2	55	63	....	8
Precinct 3	78	82	....	4
Precinct 4	227	258	....	31
Precinct 5	107	106	1	....
Precinct 6	259	267	....	8
Precinct 7	179	181	....	2
Precinct 8	247	260	....	13
Precinct 9	259	286	....	27
Precinct 10	169	181	....	12
Precinct 11	238	260	....	22
Precinct 12	268	309	....	41
Precinct 13	209	232	....	23
Precinct 14	218	242	....	24
Precinct 15	197	204	....	7
Precinct 16	212	215	....	3
Precinct 17	178	227	....	49
Precinct 18	260	263	....	3
Precinct 19	333	351	....	18
Precinct 20	287	320	....	33
Precinct 21	198	224	....	26
Precinct 22	204	246	....	42
Total	4,503	4,903	1	401
WARD 27.				
Precinct 14	222	232	....	10
Precinct 15	279	312	....	33
Precinct 16	234	278	....	44
Precinct 17	182	197	....	15
Precinct 18	213	238	....	25
Precinct 19	245	248	....	3
Precinct 20	191	208	....	17
Precinct 21	214	227	....	13
Precinct 22	267	276	....	9
Precinct 23	181	191	....	10
Precinct 24	223	255	....	32
Precinct 25	251	272	....	21
Precinct 26	294	308	....	14
Precinct 27	259	286	....	27
Precinct 28	251	263	....	12
Precinct 29	291	307	....	16
Precinct 30	245	279	....	34
Precinct 31	211	212	....	1
Precinct 32	225	237	....	12
Precinct 33	228	217	11	....
Precinct 34	238	252	....	14
Precinct 35	240	259	....	19
Precinct 36	238	251	....	13
Precinct 37	176	205	....	29
Precinct 38	250	281	....	31
Total	5,848	6,291	11	453

This table shows the uniformity of contestee's majority, scattered throughout 145 of the 155 precincts, in which contestee ran ahead of his party. The small number, uniformity, and wide diversity of this majority in each precinct is at once apparent.

HAWES-BOGY VOTE BY PRECINCTS.

Contestee carried 99 precincts, ran even in 1 precinct, and behind contestant in 55 precincts, showing by this table the uniform distribution of the vote throughout the district.

	Total vote.		Majorities.	
	Hawes.	Bogy.	Hawes.	Bogy.
WARD 2.				
Precinct 1	223	171	52	
Precinct 2	175	229		54
Precinct 3	103	187		84
Precinct 4	208	318		110
Precinct 5	142	211		69
Precinct 6	221	217	4	
Precinct 7	246	246		
Precinct 8	197	275		78
Precinct 14	180	419		239
Total	1,695	2,273	56	634
WARD 3.				
Precinct 1	264	187	77	
Precinct 2	202	107	95	
Precinct 3	220	176	44	
Precinct 4	251	194	57	
Precinct 5	226	148	78	
Precinct 6	143	130	13	
Precinct 7	240	190	50	
Precinct 8	205	175	30	
Precinct 9	263	246	17	
Precinct 10	213	266		53
Precinct 11	190	289		99
Precinct 12	223	278		55
Precinct 13	220	327		107
Precinct 14	263	127	136	
Precinct 15	256	155	101	
Total	3,379	2,995	698	314
WARD 4.				
Precinct 1	238	48	190	
Precinct 2	311	122	189	
Precinct 3	166	81	85	
Precinct 4	239	136	103	
Precinct 5	354	70	284	
Precinct 6	76	80		4
Precinct 7	240	91	149	
Precinct 8	320	167	153	
Precinct 9	251	171	80	
Precinct 10	190	128	62	
Precinct 11	363	154	209	
Precinct 12	248	180	68	
Precinct 13	237	168	69	
Precinct 14	278	135	143	
Precinct 15	283	86	197	
Precinct 16	271	129	142	
Total	4,065	1,946	2,123	4
WARD 18.				
Precinct 1	243	185	58	
Precinct 2	256	155	101	
Precinct 3	212	251		39
Precinct 4	154	339		185
Precinct 5	176	278		102
Precinct 6	240	200	40	
Precinct 7	164	276		112
Precinct 8	198	242		44
Precinct 9	265	179	86	
Precinct 10	311	131	180	
Precinct 11	177	262		85
Precinct 12	319	90	229	
Precinct 13	380	154	226	
Precinct 14	184	216		32
Precinct 15	172	173		1
Precinct 16	258	189	69	
Precinct 17	208	275		67
Precinct 18	124	190		66
Total	4,041	3,785	989	733

	Total vote.		Majorities.	
	Hawes.	Bogy.	Hawes.	Bogy.
WARD 19.				
Precinct 1	29	445		[illegible]
Precinct 2	84	227		143
Precinct 3	122	129		7
Precinct 4	317	172	145	
Precinct 5	217	241		24
Precinct 6	211	329		118
Precinct 7	219	387		168
Precinct 8	343	164	179	
Precinct 9	232	204	28	
Precinct 10	128	256		128
Precinct 11	171	180		9
Precinct 12	216	225		9
Precinct 13	57	580		523
Precinct 14	124	379		255
Precinct 15	59	426		367
Total	2,529	4,344	352	2,167
WARD 20.				
Precinct 1	155	251		96
Precinct 2	275	169	106	
Precinct 3	407	159	248	
Precinct 4	289	154	135	
Precinct 5	250	237	13	
Precinct 6	475	98	377	
Precinct 7	421	189	232	
Precinct 8	357	150	207	
Precinct 9	326	163	163	
Precinct 10	321	185	136	
Precinct 11	314	247	67	
Precinct 12	305	183	122	
Precinct 13	253	176	77	
Precinct 14	233	163	70	
Precinct 15	368	167	201	
Precinct 16	328	220	108	
Precinct 17	273	213	60	
Total	5,350	3,124	2,322	96
WARD 22.				
Precinct 1	144	270		126
Precinct 2	262	179	83	
Precinct 3	267	121	146	
Precinct 4	312	125	187	
Precinct 5	291	119	172	
Precinct 6	271	139	132	
Precinct 7	197	355		158
Precinct 8	301	153	148	
Precinct 9	238	202	36	
Precinct 10	231	187	44	
Precinct 16	129	436		307
Precinct 17	13	487		474
Precinct 18	19	444		425
Precinct 19	57	298		241
Precinct 20	213	190	23	
Precinct 21	142	283		141
Precinct 22	206	231		25
Precinct 23	180	148	32	
Total	3,473	4,367	1,003	1,897
WARD 26.				
Precinct 1	126	277		151
Precinct 2	63	407		344
Precinct 3	82	328		246
Precinct 4	258	156	102	
Precinct 5	106	342		236
Precinct 6	267	204	63	
Precinct 7	181	283		102
Precinct 8	260	191	79	
Precinct 9	286	196	90	
Precinct 10	181	238		57
Precinct 11	260	240	20	

	Total vote.		Majorities.	
	Hawes.	Bogy.	Hawes.	Bogy.
WARD 26—contd.				
Precinct 12......	309	279	30	....
Precinct 13......	232	159	73	....
Precinct 14......	242	239	3	....
Precinct 15......	204	281	....	77
Precinct 16......	215	170	35	....
Precinct 17......	227	166	61	....
Precinct 18......	263	198	65	....
Precinct 19......	351	233	118	....
Precinct 20......	320	197	123	....
Precinct 21......	224	267	....	43
Precinct 22......	246	179	67	....
Total......	4,903	5,230	929	1,256
WARD 27.				
Precinct 14......	232	230	2	....
Precinct 15......	312	202	110	....
Precinct 16......	278	182	96	....
Precinct 17......	197	216	....	19
Precinct 18......	238	228	10	....
Precinct 19......	248	232	16	....
WARD 27—Contd.				
Precinct 20......	208	186	22	....
Precinct 21......	227	203	24	....
Precinct 22......	276	151	125	....
Precinct 23......	191	197	....	6
Precinct 24......	255	198	57	....
Precinct 25......	272	240	32	....
Precinct 26......	308	284	24	....
Precinct 27......	286	241	45	....
Precinct 28......	263	266	....	3
Precinct 29......	307	215	92	....
Precinct 30......	279	256	23	....
Precinct 31......	212	264	....	52
Precinct 32......	237	200	37	....
Precinct 33......	217	290	....	73
Precinct 34......	252	217	35	....
Precinct 35......	259	222	37	....
Precinct 36......	251	198	53	....
Precinct 37......	205	195	10	....
Precinct 38......	281	215	66	....
Total......	6,291	5,528	916	153

SUMMARY.

The election returns in the 155 precincts show that—

1. Contestee carried five wards and parts of wards.
2. Contestee carried 99 voting precincts.
3. Contestee ran even in one precinct.
4. Contestee was defeated in 55 precincts.
5. Contestee received more votes than Cox (the next high Democrat) in 139 precincts.
6. Contestee ran even with Cox in nine precincts.
7. Contestee ran behind Cox in only seven precincts.

The returns further show that contestant ran behind Harding 2,223 votes.

That contestant ran behind contestee 2.134 votes.

That Harding carried the district by 2,403 votes.

That the majorities were evenly distributed throughout the 155 precincts.

These tables and summary should put contestant upon notice that if his contest is made in good faith it becomes his duty to investigate each and every one of the 155 voting precincts, because the majorities are so evenly and uniformly scattered throughout the 155 precincts.

In no other way can a recount and examination of ballots be undertaken which will furnish Congress with satisfactory evidence of fraud or corruption.

GIVES NOTICE.

This gives contestant notice that contestee will, together with other evidence, introduce testimony to prove—

That contestant's election was opposed by many Republicans.

That contestant was advised by members of the Republican congressional committee of the eleventh district that a contest would be futile in view of the honest and orderly election that they knew had been held between contestant and contestee.

That prominent Republicans have advised contestant not to contest for the same reason, and that contestant is proceeding despite the advice and counsel of Republican leaders and committeemen.

That many Republicans, active in politics and contributors to Republican campaign funds, opposed contestant's election. And I shall produce evidence showing the grounds upon which their objections are based.

That contestant's association with one Samuel L. Wheeler, agent of the discredited I. V. L., an anti-Catholic organization similar to the A. P. A., was the occasion of the loss of many votes to contestant.

That contestant is not now, and has never been, a bona fide resident of the eleventh congressional district, but created a temporary political residence in this district in the month of May, 1920, and that this fact was well known to the voters of the district and resented by them.

That contestant has been a habitual candidate before Republican conventions and primaries for Republican nominations for Congress, and has, in Republican contests, been uniformly overwhelmingly defeated, in the tenth district once, in the twelfth district once, and in the eleventh district twice, and that this fact was generally known to the voters of the eleventh congressional district.

That in contestant's contest in the Republican primary on August 3, 1920, his opponent, Otto F. Stifel, received 8,296 votes, and he received only 1,944.

That in this contest in the Republican primary contestant made disparaging remarks about the said Otto F. Stifel, a man of great popularity, a prominent Republican and large campaign contributor to the Republican Party, which attacks were resented by Mr. Stifel's friends and relatives in said district, and that they therefore voted against contestant in the election.

That influential Republicans residing in the tenth and twelfth congressional districts of the city of St. Louis, because of the character of the campaign carried on by contestant in Republican primaries, were opposed to his election, and that this fact was known to the Republican voters of the said eleventh congressional district.

That because of litigation and personal encounters, which have been published in the newspapers regarding contestant, an unfavorable opinion was created in the minds of the voters in the eleventh congressional district and caused them to scratch him in the election.

That having been defeated by a majority of 6,352 in the Republican primary held on the 3d day of August, 1920, contestant made disparaging remarks of his opponents and of members of the Republican organization, which caused them to withhold their support.

That upon the unfortunate death of Mr. Stifel on August 18, 1920, which created a vacancy, because contestant was the second high candidate in the primary and because it was the belief of the Republican congressional committee in the eleventh district that no Republican could be elected in that district he was given the Republican nomination for Congress.

That if said Republican committee had believed the election of a Republican Congressman was possible, such nomination would not have been given the contestant.

That on the afternoon of August 24, 1920—the day contestant received the nomination from the Republican congressional committee—he stated that it was his intention to contest contestee's election, for the reason that it was his belief that the next Congress would be Republican, and that because of this fact he would be seated in Congress no matter what the result of the election would be.

That contestant repeated this statement on numerous occasions and places during the conduct of the campaign.

That contestant's contest is not brought in good faith for the purpose of determining whether he or contestee received a majority of the votes cast in the eleventh congressional district, but for the purpose of punishing certain Republicans, election officials, and others who he believes did not support him in the election.

That contestant, at the time of his notice, did not have in his possession evidence to sustain a single charge or specification charging corruption or improper conduct upon the part of voters or election officials.

That contestant, having performed no patriotic service that was known to the voters of the said district during the war, and the contestee having been known to have served in the Army, many ex-soldiers and members of the American Legion for that reason voted for the contestee and against the contestant.

That contestee resided in the eleventh congressional district for nearly 20 years, was married in the district, his children were born there, and that he is and was well acquainted and has numerous warm, personal friends in both political parties residing in that district.

That until this campaign contestant never lived in this district; that his acquaintance is limited; that for various reasons many Republicans supported contestee in the election, and for various reasons many Republicans opposed contestant's election.

Contestee has publicly expressed in an address published in the Congressional Record in the year 1919 opinions upon the League of Nations which were not in accord with President Wilson's position, and again reaffirmed this opinion during the campaign. His position upon this subject met the approval of many Republican and Independent voters in the eleventh congressional district. Other addresses and articles upon public questions and military matters were read by the voters in the eleventh congressional district and approved by them, which articles and addresses contestee will offer in evidence.

CONCLUSION.

The contestant is a man of financial means which will permit him to proceed with a thorough investigation of such evidence as he may procure to present to Congress for its consideration. He is not engaged in any business or profession, so that his entire time is at his disposal to prosecute this investigation with diligence and speed, and therefore there can be no occasion for delay or thoroughness in such investigation unless it is intentionally done by him.

Contestee requests and urges this to be done so that no stain or improper criticism shall attach to his election, and so that he may be permitted to perform his legal duties as a Congressman, representing the voters of the eleventh congressional district without suspicion of his credentials and impairment of his usefulness to his constituency.

Under the law and practice of Congress, contestant is allowed 10 days from receipt of this answer in which to reply to contestee's statements therein.

Contestee takes the liberty of directing the attention of contestant to this fact and urges that the reply may not be permitted to extend for the 10 days' limit, after which time evidence can be taken which will enable contestant and contestee to complete the whole record for submission at the first special meeting of the Sixty-seventh Congress.

Contestee promises quick and active cooperation in selecting impartial notaries, commissioners, or other public officials under whose jurisdiction such thorough investigation can be made.

Contestee further avers that upon a full, fair, and impartial examination and recount of all the votes cast in said eleventh congressional district at the election on November 2, 1920, the right and title of contestee to said office of Representative as aforesaid will be fully confirmed and the claims of contestant with reference thereto, and every such claim as set forth in his said notice of contest, will be proven to be wholly without merit or foundation

HARRY B. HAWES, *Contestee.*

STATE OF MISSOURI,
City of St. Louis, ss.

The foregoing answer, consisting of 22 pages, sworn to and subscribed before me this 20th day of December, 1920.

[SEAL.]

THEODORE BECKER,
Notary Public, City of St. Louis, Mo.

My commission expires October 7, 1923.

STATE OF MISSOURI,
City of St. Louis, ss.

Harry B. Hawes, contestee, of lawful age, being first duly sworn, upon his oath says that he personally served Bernard P. Bogy, named as contestant in said answer on the 20th day of December, 1920, in the said city of St. Louis, State of Missouri, by delivering to said contestant a true and accurate copy of his aforesaid answer, in the presence of George Kennedy and George Hunkler, both disinterested citizens of the city of St. Louis, Mo.

HARRY B. HAWES, *Contestee.*

Subscribed and sworn to before the undersigned notary public of the city of St. Louis, in the State of Missouri, on this December 21, 1920.

[SEAL.]

BOAZ B. WATKINS, *Notary Public.*

My commission expires October 5, 1924.

STATE OF MISSOURI,
City of St. Louis, ss.

George Kennedy, of lawful age, being first duly sworn, upon his oath says that he was personally present when Harry B. Hawes personally served a true and accurate copy of the foregoing answer upon Bernard P. Bogy, named as contestant in said answer, on the 20th day of December, 1920, in the aforesaid city of St. Louis, State of Missouri, and saw him deliver to said contestant a true and accurate copy of said annexed answer; and affiant further states that he is of no relation to either contestant or contestee.

George Kennedy, *Affiant.*

Subscribed and sworn to before the undersigned notary public of the city of St. Louis, in the State of Missouri, on this December 21, 1920.

[SEAL.] Boaz B. Watkins, *Notary Public.*

My commission expires October 5, 1924.

State of Missouri,
City of St. Louis, ss:

George Hunkler, of lawful age, being first duly sworn, upon his oath says that he was personally present when Harry B. Hawes personally served a true and accurate copy of the foregoing answer upon Bernard P. Bogy, named as contestant in said answer, on the 2th day of December, 1920, in the aforesaid city of St. Louis, State of Missouri, and saw him deliver to said contestant a true and accurate copy of said annexed answer; and affiant further states that he is of no relation to either contestant or contestee.

George Hunkler, *Affiant.*

Subscribed and sworn to before the undersigned notary public of the city of St. Louis, in the State of Missouri, on this December 21, 1920.

[SEAL.] Boaz B. Watkins, *Notary Public.*

My commission expires October 5, 1924.

TESTIMONY FOR CONTESTANT.

NOTICES TO TAKE TESTIMONY.

To Harry B. Hawes,
Contestee, or his attorneys of record:

You are hereby notified that I intend to take the testimony of you yourself and of the witnesses whose names and addresses are given in the appended list on Monday the 24th day of January, A. D. 1921, for the purposes of using such testimony in the pending election contest, wherein you are the contestee and I am the contestant, relating to the office of Representative in the Sixty-seventh Congress of the United States from the eleventh district of the State of Missouri. The taking of such testimony will be commenced at the hour of 10 o'clock in the forenoon of the day above mentioned before Frank B. Grodski, a notary public within and for the city of St. Louis, State of Missouri, at rooms 316–319 Chemical Building, northeast corner of Olive and Eighth Streets, in the city of St. Louis, Mo.; and if the taking of such testimony shall not be concluded on said date the further taking of such testimony will be continued from day to day at the same hour and place until further completed.

Harry B. Hawes, contestee, 4411 Westminster Street, St. Louis, Mo.
Louis Kozlicki, 2503a Coleman Street, St. Louis, Mo.
Stanley Kozlicki, 1405 North Twelfth Street, St. Louis, Mo.
J. H. Helser, 1400 North Eleventh Street, St. Louis, Mo.
Theo. Umbright, 1433 Dodier Street, St. Louis, Mo.
William Haffner, care of N. Market Feed Co., 1900 North Whittier Street, St. Louis, Mo.
Rev. Eugene Hansmann, 3419 Franklin Avenue, St. Louis, Mo.
Mrs. W. T. Blesse, 3635a Page Avenue, St. Louis, Mo.
William J. Blesse, 3635a Page Avenue, St. Louis, Mo.
Elmer Moone, clerk, circuit court's office, St. Louis, Mo.
Wm. Roades, 2419 North Ninth Street, St. Louis, Mo.
Wm. R. Schneider, 1554–1557 Pierce Building, St. Louis, Mo.
Al. Eissmann, care of Atlas Electric Talking Machine, 4257w Easton Avenue, St. Louis, Mo.
Julius Goldsmith, 3053 Glasgow Place, St. Louis, Mo.
James Selser, 1308 North Market Street, St. Louis, Mo.
William White, 1329 North Tenth Street, St. Louis, Mo.
John J. Hurley, Election Office, City Hall, St. Louis, Mo.

Emma Boob, Election Office, City Hall, St. Louis, Mo.
John M. McCluskey, 1214 St. Ange Avenue, St. Louis, Mo.
A. H. Niederlucke, 2719½ Glasgow Avenue, St. Louis, Mo.
John Burekly, 2823 Pestallozzi, St. Louis, Mo.
John F. Jaeger, 4138 Greenles Place, St. Louis, Mo.
Geo. F. Nictor, 5346 Maffitt Avenue, St. Louis, Mo.
Henry F. Saller, 2811 South Jefferson Avenue, St. Louis, Mo.
Fred L. Becker, 1956 Sidney Street, St. Louis, Mo.
L. G. Heckel, 3320 Jamieson Avenue, St. Louis, Mo.
Henry Boedter, 912 Montgomery Street, St. Louis, Mo.
Mrs. Grace Guy, 1111 Branch Street, St. Louis, Mo.
Dr. B. W. Clark, 3431 Morgan Street, St. Louis, Mo.
Mrs. Leila Slade, 3419 Franklin Avenue, St. Louis, Mo.
Mr. Clarence Slade, 3419 Franklin Avenue, St. Louis, Mo.
Mrs. Esther Fleming, 3420 Franklin Avenue, St. Louis, Mo.

BERNARD P. BOGY,
Contestant.
By CORNELIUS F. BAUER,
J. M. FEIGENBAUM,
His Attorneys.

STATE OF MISSOURI,
City of St. Louis, ss:

I, ——— ———, of lawful age, first being duly sworn, on my oath say that I served this notice in the city of St. Louis, State of Missouri, by delivering a true copy thereof to ——— ——— on the —— day of January, A. D. 1921.

——— ———.

Subscribed and sworn to before me this —— day of January, A. D. 1921.

——— ———, *Notary Public.*

My commission expires ——— ———.

To HARRY B. HAWES,
Contestee, or his attorneys of record:

You are hereby notified that I intend to take the testimony of you yourself and of the witnesses whose names and addresses are given in the appended list on Thursday, the 27th day of January, A. D. 1921, for the purposes of using such testimony in the pending election contest, wherein you are the contestee and I am the contestant, relating to the office of Representative in the Sixty-seventh Congress of the United States from the eleventh district of the State of Missouri. The taking of such testimony will be commenced at the hour of 11 o'clock in the forenoon of the day above mentioned before Frank B. Grodski, a notary public within and for the city of St. Louis, and State of Missouri, at rooms 316–319 Chemical Building, northeast corner of Olive and Eighth Streets, in the city of St. Louis, Mo.; and if the taking of such testimony shall not be concluded on said date the further taking of such testimony will be continued from day to day at the same hour and place until further completed.

Harry S. Turner, 4111 Washington Avenue, St. Louis, Mo.
Paul Murphy, 5575 Delmar Avenue, St. Louis, Mo.
Sam Gutman, 7117 Manchester Avenue, St. Louis, Mo.
Mrs. M. L. Caulfield, 1310 Bayard Avenue, St. Louis, Mo.
M. J. E. Hartmann, 1400 North Euclid Avenue, St. Louis, Mo.

BERNARD P. BOGY,
Contestant.
CORNELIUS F. BAUER,
J. M. FEIGENBAUM,
His Attorneys.

STATE OF MISSOURI,
City of St. Louis, ss:

I, ——— ———, of lawful age, first being duly sworn, on my oath say that I served this notice in the city of St. Louis, State of Missouri, by delivering a true copy thereof to ——— ——— on the —— day of January, A. D., 1921.

——— ———.

Subscribed and sworn to before me this —— day of January, A. D. 1921.

——— ———,
Notary Public.

My commission expires ——— ———.

TO HARRY B. HAWES,
Contestee, or his attorneys of record.

You are hereby notified that I intend to take the testimony of the witnesses whose names and addresses are given in the appended list on Friday, the 28th day of January, A. D. 1921, for the purpose of using such testimony in the pending election contest, wherein you are the contestee and I am the contestant, relating to the office of Representative in the Sixty-seventh Congress of the United States from the eleventh district of the State of Missouri. The taking of such testimony will be commenced at the hour of 10 o'clock in the forenoon at the city of St. Louis and State of Missouri, at rooms 316–319 Chemical Building, northeast corner of Olive and Eighth Streets, in the city of St. Louis, Mo.; and if the taking of such testimony shall not be concluded on said date the further taking of such testimony will be continued from day to day at the same hour and place until further completed.

Charles Claudius, election commissioner's office.
Ike Sievers, 614 Olive Street, St. Louis, Mo.
J. N. McKelvey, 4119 Washington Avenue, St. Louis, Mo.
Fred Pahl, 4634 Maffitt Avenue, St. Louis, Mo.
Bernard P. Bogy, 5943 Maple Avenue, St. Louis, Mo.
Arthur Brunk, 407 City Hall, St. Louis, Mo.
William Runge, 407 City Hall, St. Louis, Mo.
Edward E. Lewis, 433 Laclede Avenue, St. Louis, Mo.

BERNARD P. BOGY,
Contestant.
CORNELIUS F. BAUER,
J. M. FEIGENBAUM,
His Attorneys.

STATE OF MISSOURI,
City of St. Louis, ss.

I, ——— ———, of lawful age, first being duly sworn, on my oath say that I served this notice in the city of St. Louis, State of Missouri, by delivering a true copy thereof to ——— ——— on the —— day of January, A. D. 1921.

——— ———.

Subscribed and sworn to before me this —— day of January, A. D. 1921.

——— ———,
Notary Public.

My commission expires ——— ———.

TO H. B. HAWES,
Or his attorney of record:

You are hereby notified that I intend to take testimony of witnesses whose names and residences are given in the appended list on Tuesday, January 11, 1921, for the purpose of using such testimony in the pending election contest, wherein I am contestant and you are contestee, relating to the office of Representative in the Sixty-seventh Congress of the United States of North America, from the eleventh congressional district of Missouri, commencing at the hour of 10 o'clock in the forenoon of said day, before Frank B. Grodski, a notary public within and for the city of St. Louis and State of Missouri, at the office of the board of election commissioners, in the city hall of the city of St. Louis and State of Missouri; and if the taking of such testimony shall not be concluded on such date the further taking of such testimony will be continued from day to day at the same hour and place until fully completed.

Glendy B. Arnold, 5906a Clemens Avenue.
Oscar E. Buder, 3846 Lafayette Avenue.
Charles J. Lammert, 4149 Westminster.
Vincent Dempsey, 4906 Forest Park Boulevard.

BERNARD P. BOGY, *Contestant.*

STATE OF MISSOURI,
City of St. Louis, ss:

I hereby certify that I executed the above notice on the 5th day of January, 1921, in the city of St. Louis, State of Missouri, by delivering a true copy thereof to Contestee H. B. Hawes.

——— ———.

Subscribed and sworn to before me this 6th day of January, 1921.

——— ———,
Notary Public.

My commission expires April 20, 1924.

NOTARY PUBLIC'S SUBPŒNA.

The State of Missouri to Charles Claudius greeting:

You are hereby commanded that setting aside all manner of excuse and delay you be and appear before Frank B. Grodzki, a notary public, within and for the city of St. Louis, in the State of Missouri, on the 28th day of January, A. D. 1921, at the hour of 10 o'clock in the forenoon of said day, at rooms 316 Chemical Building, in said city and State of Missouri, then and there to testify, and the truth to say, in a certain cause and election contest, now pending in the Sixty-seventh Congress of the United States, in the eleventh congressional district of Missouri, city of St. Louis, in the State of Missouri, wherein Bernard P. Bogy is contestant and Harry B. Hawes is contestee. Hereof fail not at your peril.

And the person or officer serving this writ is commanded to have the same before the said Frank B. Grodzki at the time and place aforesaid, certifying how he executed the same.

Witness Frank B. Grodzki, notary public, within and for the city and State, for the said city and State, with my notarial seal hereto affixed, at my office in said city on this the 19th day of January, A. D. 1921.

[SEAL.]

FRANK B. GRODZKI,
Notary Public.

My commission as notary public will expire on September 9, 1921.

STATE OF MISSOURI, *City of St. Louis, ss:*

George Kennedy, being duly sworn on his oath, says that he served the within subpœna in the city of St. Louis, State of Missouri, on the 21st day of January, 1921, by delivering a copy of the same personally to Charles Claudius, the within named.

GEO. KENNEDY.

Subscribed and sworn to before me this 21st day of January, 1921.

[SEAL.]

ANDREW H. WATSON,
Notary Public.

My commission expires August 4, 1922.

[Sixteen notary public's subpœnas similar to above omitted in printing.]

[Front.]

CASS STATION.

Post Office Department, official business. Registered article No. 4513.
Return to F. B. Grodzki, 1012 Cass Avenue, St. Louis, Mo.

[Reverse.]

RETURN RECEIPT.

Received from the postmaster the registered or insured article, the original number of which appears on the face of this card.

PETER T. BARRETT.
(Signature or name of addressee.)

Date of delivery, ———, 19—.
[Four similar return receipts omitted in printing.]

RECEIPT FOR REGISTERED ARTICLE REGISTERED AT THE POST OFFICE INDICATED IN POSTMARK.

No. 4511. Class postage 1.

Complete record of registered mail is kept at the post office, but the sender should write the name of the addressee on back hereof as an identification. Preserve and submit this receipt in case of inquiry.

POSTMASTER,
Per C. BARTH.

[Return receipt demanded.]

[Five similar receipts, bearing Nos. 4512, 4513, 4514, 4515, and 4516, are not printed.]

FEBRUARY 21, 1921.

Hon. BERNARD P. BOGY,
5943 Maple Avenue, St. Louis, Mo.

MY DEAR MR. BOGY: I have collected all the necessary papers, testimony, and other documents pertaining to your contest versus Hawes, and am ready, as notary, to certify and seal same and mail them to the Clerk of the House of Representatives at Washington, D. C.

I therefore kindly ask you and your attorneys to call at my office, 1012 Cass Avenue, on next Wednesday afternoon, February 23, 1921, at 3 o'clock, in order to witness the proceedings.

I have also notified Maj. Howes and his attorneys to this matter.

I am, very truly, yours,

FRANK B. GRODZKI.

FEBRUARY 21, 1921.

Mr. J. M. FEIGENBAUM,
Attorney for Mr. Bogy, St. Louis, Mo.

MY DEAR MR. FEIGENBAUM: I have collected all the necessary papers, testimony, and other documents pertaining to the Bogy and Hawes contest and am ready to certify to same and seal them, then mail them to the Clerk of the House of Representatives at Washington, D. C.

So I trust that you and Mr. Bogy will call at my office, 1012 Cass Avenue, on next Wednesday afternoon, February 23, 1921, at 3 o'clock, in order that you can witness the sealing of same.

I have also notified all parties to this contest.

Believe me to be, very truly, yours,

FRANK B. GRODZKI.

FEBRUARY 21, 1921.

Mr. CORNELIUS F. BAUER,
Attorney at law, St. Louis, Mo.

DEAR SIR: I have collected all the necessary papers, testimony, and other documents pertaining to the Bogy *v.* Hawes contest and am ready to certify to same and seal and mail them to the Clerk of the House of Representatives at Washington, D. C.

I therefore ask you and Mr. Bogy to be present at my office on next Wednesday afternoon, 1012 Cass Avenue, at 3 o'clock, which being the 23d day of February, 1921, in order to witness same.

I have also notified all parties to this matter.

I am, very truly, yours,

FRANK B. GRODZKI.

FEBRUARY 21, 1921.

Hon. HARRY B. HAWES,
Boatmen's Bank Building, St. Louis, Mo.

MY DEAR MR. HAWES: I have collected all the necessary papers, testimony, and other documents pertaining to the contest instituted by Mr. Bogy versus yourself, and as notary I am ready to certify to same, seal, and mail them to the Clerk of the House of Representatives at Washington, D. C.

I therefore kindly ask you and your attorneys to call at my office, 1012 Cass Avenue, on next Wednesday afternoon, February 23, 1921, at 3 o'clock.

I have also notified Mr. Bogy and his attorney to be present at this time and date.

I am, very sincerely, yours,

FRANK B. GRODZKI.

FEBRUARY 21, 1921.

Mr. PETER BARRETT,
Attorney for Maj. Hawes, St. Louis, Mo.

DEAR MR. BARRETT: I have collected all the necessary papers, testimony, and other documents pertaining to the contest of Bogy *v.* Hawes and am ready to certify to same as notary and seal same, then mail them to the Clerk of the House of Representatives at Washington, D. C.

I therefore kindly ask you to be present with Mr. Cummings and Maj. Hawes to witness the certification of same at my office on next Wednesday afternoon at 3 o'clock, 1012 Cass Avenue. I have also notified Mr. Bogy and his attorneys.

I am, very truly, yours,

FRANK B. GRODZKI.

FEBRUARY 21, 1921.

Mr. CAMPBELL CUMMINGS,
Attorney for Harry B. Hawes, Times Building, St. Louis, Mo.

MY DEAR MR. CUMMINGS: I have collected all the necessary papers, testimony, and other documents pertaining to the contest of Bogy *v.* Hawes, and am ready to certify to the same as notary and mail them to the Clerk of the House of Representatives at Washington, D. C.

I therefore have set the time to witness the sealing and certifying for next Wednesday afternoon at 3 o'clock, being the 23d day of February, 1921, at my office, 1012 Cass Avenue. I have also notified all parties in this matter.

I am, very truly, yours,

FRANK B. GRODZKI.

Depositions of witnesses produced, sworn, and examined on the 21st day of January, in the year of our Lord 1921, between the hours of 8 o'clock in the forenoon and 6 o'clock in the afternoon of that day, at the office of the board of election commissioners, city hall, in the city of St. Louis and State of Missouri, before Frank B. Grodzki, a notary public, in a certain cause now pending before the House of Representatives of the Sixty-seventh Congress of the United States, between Bernard P. Bogy, contestant, and Harry B. Hawes, contestee, on the part of the contestant.

Appearances: Cornelius F. Bauer and J. M. Feigenbaum for contestant; Campbell Cummings and Peter T. Barrett for contestee.

Chairman ARNOLD. Now, the recount of the ballots has been completed and we have now come to the tabulation of the result of the count in each of the 135 precincts, and we did not want to proceed with the tabulation of the count as made by the clerks without the presence of the contestant and contestee or their attorneys and watchers. It will probably take us the whole day to tabulate these figures, making a recapitulation of the result. Are you ready to start with the tabulation of the recount?

Mr. BAUER. I understand these reports are made in triplicate—rather, four copies——

Chairman ARNOLD. Yes, sir .

Mr. BAUER. Two originals.

Chairman ARNOLD. Two originals.

Mr. BUDER. One original. One for our office and one for either side—quadruplicate.

Chairman ARNOLD. Now, they are entitled to one copy.

Mr. BUDER. Contestee and contestant and our office.

Chairman ARNOLD. Now, then, if we give you a copy of our data compiled by the clerks of the recount, do I understand you would not care to be present when the clerks here will make the tabulation of the recount, or would you want watchers?

Mr. BAUER. We are entitled—there are 155 reports in 155 precincts. We are entitled to have a copy of the 155 reports, or 155 exhibits to be attached to our record.

Mr. FEIGENBAUM. There is no need of our being present, as I see. We will have the reports, and, while there is no question about their being accurate, they can be checked——

Chairman ARNOLD. They will be checked.

Mr. BUDER. That is a mathematical proposition.

Mr. FEIGENBAUM. As far as the contestant is concerned, we don't care to be present when they are tabulated.

Chairman ARNOLD. All right. Now, gentlemen of the board, I think if you will agree to this instruction, we will give Mr. Stansbury this instruction:

Take the data compiled by the clerks in the recount and have copies of the data compared with each other in the precinct and see that they all agree before you tabulate the result of any one of them. Have one read it off and divide them up so that one clerk can read off while three others compare. Then when you have done that give one of the copies to Mr. Bogy's counsel and one of the copies to Mr. Hawes's counsel and keep the other two for the records of the office and then proceed with the original and duplicate, the result of the vote on each precinct memorandum. Then after you do that, take it down on an abstract sheet, so that you can show what the vote is. Take the data off of there just as it is compiled on the sheet. That is what they want. Now, then, what is next?

Mr. BUDER. Now, all these ballots they want to photograph. We used to send two of our clerks over, who stayed with these ballots right at the photographer's place, didn't they? You have the five ballots.

Mr. FEIGENBAUM. We have five and there are some in the nineteenth ward, twelfth precinct——

Mr. BOGY. There is some in the twenty-second precinct.

Chairman ARNOLD. You get a memorandum and give it to Mr. Stansbury and I will let you have the ballots—that is, those—write out a list of your ballots, and submit it to the other side and if they agree to it, get the ballots from Mr. Stansbury and have them photographed—photograph them here in the office.

Mr. FEIGENBAUM. In the event there is not an agreement——

Chairman ARNOLD. If there is no agreement, you bring it up before the board and we will straighten it out. They have agreed, I understand, to let you have those. Now, what is your procedure from now on?

Mr. FEIGENBAUM. Why, we had in mind taking the depositions of the individual commissioners with reference to the recount and one other matter that took place——

Chairman ARNOLD. Suppose you wait until we get the tabulation completed, too.

Mr. FEIGENBAUM. If that is agreeable to contestee, we would just as leave wait until that is completed.

Chairman ARNOLD. Because we will be calling for this data in these depositions—I assume you will, because the depositions will relate to the compilation.

Mr. BAUER. It will be taken before the completing of it, anyhow.

Chairman ARNOLD. Your depositions, I understand, will relate to the compilation of this data of the clerks?

Mr. BAUER. With reference to the records.

Chairman ARNOLD. I would suggest that you wait until we finish it. I understand we can finish it here in a day—we can complete that in one day.

Mr. FEIGENBAUM. Shall we then agree to take this up any particular day? Let it be to-morrow.

Chairman ARNOLD. Of course, it is your deposition and you gave the notice.

Mr. FEIGENBAUM. Do you think that will be completed to-morrow morning or Monday morning?

Chairman ARNOLD. I think you had better put it off until Monday morning.

Mr. BARRETT. We are not going to agree that they continue taking anything on the 27th, because I have a matter for trial——

Mr. FEIGENBAUM. If we can't agree to——

Mr. BARRETT. Then I don't agree to nothing. I have been agreeing to everything and been nice—I won't agree to nothing. Let them serve notice. I agreed to everything for you people.

Mr. BUDER. We have been holding sessions under that notice, I understand, and we have been adjourning every day.

Mr. BARRETT. We didn't agree to that. I have a matter for trial and I have a great deal at stake and I want to try that case. I may get through in the morning.

Mr. FEIGENBAUM. I want to make myself clear. My reason for refusing to agree to that is not that we didn't want to give you time to go into any legal matters you have, but our time is so short to take these depositions of the witnesses we have served that we will be unable to complete them by the time allowed by Congress, if we stop any particular day next week.

Mr. BARRETT. If that is your complaint about it, I will add that the time that is lost on that day, but I am going to try that matter on that day. If we lose that day, we will give him that day. We don't care to cheat him out of a day, but I want you to understand, though, we continued this before without any stipulation at all when you had a man on trial. Any lawyers do that, and we did that at your request.

Mr. Feigenbaum. I appreciate that.

Mr. Cummings. We did it for the lawyer and did it for the notary.

Mr. Feigenbaum. I say this only because we can't complete our depositions. Of course, if we don't agree to it, we can just proceed with the taking of the depositions of one of the election commissioners and continue it over, if we can't complete it. So an agreement at this time won't be necessary.

Chairman Arnold. Just a minute. I suppose you want this minute to show the notary is adjourning it.

Mr. Barrett. I want it understood there will be nothing done on the 27th, and if you want an extra day lost on that account, we will do that.

Mr. Feigenbaum. We are going to take some of the depositions Monday, Tuesday, and Wednesday, perhaps if we reach a certain agreement. Now, it may be we will be able to give up Thursday evening of the 22d, but why not wait until Wednesday until we come to that. At this time we can go ahead with one of the commissioner's depositions. I just want to ask one question of Judge Arnold, to get it in the record we started taking the depositions.

Mr. Barrett. I am going to be real technical with you unless you agree to that. I am going to object to this proceeding going over owing to the absence of the Notary Grodzky and I will further object to any further proceedings on this matter, because these witnesses have not been specially sworn in this matter, but were sworn only as to the recount. And that there is no agreement, so far as I know, about continuing the taking of the depositions of these four witnesses who were subpœnaed some time ago.

Mr. Bauer. On behalf of the contestant, we state the depositions to-day are taken under the notice that was served.

Chairman Arnold. I don't know who you gentlemen are talking to. There is nobody here to proceed with the depositions. We are not taking any depositions.

Mr. Feigenbaum. As I see it, there is nothing left for us to do but wait for Mr. Grodzky to arrive, as the notice was served by him and we will have to wait for him. To clear the record up, we will get him right down here.

(Thereupon Notary Grodzki appeared at the hearing.)

Chairman Arnold. We have a deadlock here as to when we shall adjourn this meeting to. I suggest that we postpone the further proceeding here until Monday. They want to take depositions now—the depositions of the members of this office, and we have agreed about the tabulation on the recount—the result of the recount, and they want to take the deposition of some of the commissioners and probably all of them and I suggest they wait until their tabulation was through and suggested Monday. Now, Mr. Barrett won't agree to that for some private reason he has with Mr. Feigenbaum, so it is up to you to fix the time when we will continue.

Mr. Cummings. Mr. Grodzki, we are ready to proceed on the depositions to-day.

Mr. Feigenbaum. Mr. Grodzki, will you swear Judge Arnold as a witness in the case, or has he been sworn?

Notary Public. Not yet. Well, now, has the board completed its——

Chairman Arnold. We have completed the recount, but we haven't tabulated the result. I have made this arrangement with contestant's counsel and contestant also, that we would give contestant and contestee a copy of the data compiled by the clerks in each of the recounts in each of the precincts, and then after we did that we would proceed to make our tabulations here for the official record of these facts. They said that they wouldn't care to have any watchers present while we were making that tabulation; that they had a copy of the data from which it was made, and we have agreed to give both sides their copies, and that will give them an opportunity to check us back and catch any errors or mistakes that our clerks will make in doing that. Then, after we get that data they want the depositions——

Notary Public. I don't know, Mr. Chairman and gentlemen represented by contestee and contestant, whether I can rule or whether it is my authority to rule that your deposition shall be taken now. I think it ought to be thoroughly agreed to by both counsel for the contestant and contestee as to a suitable date. Agreeing with the chairman and the members of the board of election commissioners that these depositions—the members of the board shall be taken—the board is not ready with its certification of the recount. I think they would rather wait until that is done.

Chairman Arnold. I made that suggestion, because I thought the depositions would appertain to the data.

Mr. BUDER. I don't think the purpose is to go ahead. The purpose is just to take some testimony and adjourn until to-morrow or the day after.

Mr. BARRETT. Well, you understand my position, unless that agreement is made with me I propose to stand strictly on my legal rights. I told the gentlemen I had a matter that was specially set for the 27th, and it has been hanging fire and will be all ready for trial, and I am going to go ahead and try that case, and I told them if that would take all day I would join in giving them an extra day. We would make no point on that, but I want to try that case—everything is prepared for it, and it is specially set, and they won't lose one minute by it. We won't charge it up against their time. Heretofore we have consented when the lawyers were in court and when you (the notary) were absent on one occasion, we did that by agreement. Now, I think turn about is fair play and they lose nothing by it. We will stipulate that the time lost on the 27th will be extended to make up a whole day extra, so there can't be any quibble about the fraction of a day.

Mr. BAUER. You don't mean by that it will be the 31st? There may be some extra day after the——

Mr. BARRETT. You can extend it a day longer.

Mr. FEIGENBAUM. Sunday is the following day.

Mr. BARRETT. We will make it Monday. If you can't take them Sunday, make it Monday. Everything is perfectly agreeable to me. I don't want to quibble about it.

Mr. FEIGENBAUM. We will say this: Contestant agrees to Judge Arnold's position that the deposition of the commissioners should not be taken, but wait until the tabulation is completed; but since the question is raised by contestee at this time and before any agreement as to waiver is reached, and in order to clear the record, we desire to put Judge Arnold on as a witness, proceed with his deposition so far as we can go before reaching this absence of data, and I would like the witness sworn for that purpose.

GLENDY B. ARNOLD, of lawful age, being produced, sworn, and examined, on the part of the contestant, deposeth and saith:

Direct examination by Mr. FEIGENBAUM:

Q. Please state your name.—A. Glendy B. Arnold.

Q. You are chairman of the board of election commissioners of the city of St. Louis, Mo.?—A. Yes, sir.

Q. Judge, was a recount had in the contest of the Bogy-Hawes contest occupying a great part of last week and continuing up until Monday evening in this office?

NOTARY PUBLIC. I think you had better specify the dates.

A. The members of the board responded to notice to take depositions in this office on the 11th of January. We all appeared here at 10 o'clock in the morning of the 11th of January and a general discussion followed, and we began the recount of the ballots on the 12th of January, continuing the recount throughout that day, the 13th, 14th, 15th, and 17th, finishing the recount on Monday evening at 9 o'clock, January 17.

Q. Have tabulations been made of the records of the various boxes opened as yet to date?—A. The result hasn't been tabulated as yet, although we have in the vaults the original data compiled by the accounting clerks, who opened the ballot boxes, examined the ballots and the poll books, and made the record of the data that was asked for, and those memoranda are now in the vault of this office.

Q. Are you now in a position to deliver us or give us any data with reference to the results of the recount or the tabulated—the completed tabulated returns as finally compiled?—A. No. We are ready, as I understand, to do that.

Q. When do you believe such compilation will be completed so that we may go into the records in those finally compiled sheets?—A. For a certainty by to-morrow, anyhow. We might be able to finish them to-day, but that is doubtful, and to-morrow is only a half day in this office and we close the office at 12 o'clock.

Q. Then you believe that such work will be completed on Monday morning, and that the records will be before you by then as completed?—A. Yes, sir.

Mr. FEIGENBAUM. Then I will ask the commissioner to continue the depositions until Monday morning, when we will be able to proceed with the examination of this witness on the question of the compilation of the sheets.

Mr. Barrett. Now, then, gentlemen, I just want to ask the commissioner, the original data taken by the deputy election commissioners on the recount is in your possession, isn't it?

A. Yes, sir; I have so stated.

Q. And can it be given to contestant to-day—a copy of it in each precinct?—A. Yes, sir.

Q. There will be no objection made by contestee.—A. We have agreed—the board has agreed with the contestant to turn over to him a copy of the data compiled by the counting clerks and also the contestee.

Q. Now, that can be given to him to-day—no objection being made by the contestee.—A. We have offered to turn it over to him forthwith.

Mr. Hawes. Well, with that in your possession, can't you proceed?

Mr. Barrett. Now, I want to ask you a question, with that data in your possession, can't you proceed at once?

Mr. Feigenbaum. No; we can't proceed, because Judge Arnold has already indicated the records aren't entirely completed, and some of the questions we will ask will probably touch on the completion of the returns as tabulated in this office. For that reason there is no need proceeding until the judge is able to answer those questions.

The Witness. As far as I am personally concerned why, I only made that suggestion to the convenience of all parties concerned, but I am ready as a witness to testify if you so desire it.

Mr. Barrett. Now, then, I want to make a statement: Contestee and his counsel are here present and ready to proceed with the taking of the depositions and we waive all technical objections as to the service and the giving of time, and we are ready now to proceed with the taking of any depositions or with any data or material that contestant desires to present, although I asked counsel for contestant to exclude the 27th of January, I am now withdrawing that objection and announce that we are ready to proceed now, every day and every night, all night, up until the contestant's time expires, even though I can't attend the other and go ahead and forget about this—I will make it so there will be no objections or delays of any kind, and desire to offer the contestant every and any opportunity to present his matter fully and completely, we will now waive any objections as to the time of serving notice as to this proceeding, and I make no objection now as to this proceeding, and contestee himself has been served with a notice to take his deposition, I think it is on the 26th.

Mr. Bogy. Appear the 26th.

Mr. Barrett. Now, Mr. Hawes is personally present, and if the contestant desires to take his deposition, why, we will waive any objections to it and present him here, so that his deposition may be taken, as Mr. Hawes would like to attend a meeting of the Good Roads Convention of the State of Missouri, and he will be at Jefferson City on the 26th.

Mr. Feigenbaum. That is Tuesday.

Mr. Hawes. Wednesday.

Mr. Barrett. The notice is served for taking the deposition, and if counsel for contestant desires to take his deposition now, why, we are ready to proceed and waive objections as to the service of notice in that particular instance. Mr. Hawes is here present for that purpose.

Mr. Cummings. I will bring out that Mr. Hawes informed the contestant's attorney on January 11 that inasmuch as he was president of the Good Roads Council of Missouri it was very necessary for him to be in Jefferson City to attend the convention on January 26.

Mr. Feigenbaum. May I ask at this time who was notified as representing Mr. Bogy?

Mr. Cummings. Mr. Bauer and Mr. Bogy himself.

Mr. Bauer. Notified of what?

Mr. Cummings. That Mr. Hawes had to go to Jefferson City to attend the good-roads meeting.

Mr. Bauer. Expected to go some time—no particular date, and I suggested, then, Mr. Hawes should go at once. He said he expected to be away two or three days, and there was no particular day mentioned.

Mr. Cummings. He asked, however, that the date for the taking of his deposition would be agreed upon and that he should be accommodated.

Mr. Feigenbaum. Contestant takes this position: While we are unable at this time to proceed with the deposition, being not prepared, in order to accommodate contestee, we are willing to stipulate and agree to take his deposition some time Monday—such time as suitable, providing, however, contestee will waive any question of time and notice of taking of any depositions beginning Monday and Tuesday—instead of commencing Wednesday, so we will go right through with these depositions without stopping. That will be agreeable to contestee.

Mr. Barrett. We will agree to that in so far as notices have been served already.

Mr. Feigenbaum. Under the only notice we will present to-day.

Mr. Cummings. We haven't received any notice to take depositions.

Mr. Barrett. I don't think we ought to be able to do that, providing Mr. Hawes——

Mr. Feigenbaum. Waiver we asked is only on behalf of contestee and not on behalf of the other witnesses. Of course, they have a right to ask——

Mr. Cummings. For examination we are entitled to a list of the witnesses you are going to examine.

Mr. Feigenbaum. That is so, and we are willing to furnish you a list.

Mr. Barrett. We waive as to Hawes, but I don't think we ought to waive as to some one we know nothing about.

Mr. Feigenbaum. In that event, contestant agrees to no waiver as to no service at this time.

Mr. Barrett. I again announce we are here ready to proceed.

Mr. Feigenbaum. We will ask that at this time the deposition be continued until Monday, when the witness who has just been sworn may continue his testimony.

Mr. Cummings. We object to the continuance.

Mr. Barrett. I will state that the time ought to be occupied with the taking of the depositions of such witnesses whose testimony the contestant desires to present that does not pertain directly to the recount, and that contestant will give us a notice of the witnesses he desires to take, and we will proceed at once.

Mr. Feigenbaum. I understand that to be with reference to any witness of any nature we give you notice to-day.

Mr. Barrett. Any witness you have already served, so that if you want to proceed with them, we will go ahead.

Mr. Feigenbaum. Forthwith?

Mr. Barrett. Yes; we will go ahead with them right now.

Mr. Feigenbaum. Since objection is made to this deposition being continued until Monday morning, and because the chairman of the board of election commissioners has already indicated that the records are not completed and he could not actually complete his testimony, as indicated by some questions we may wish to ask, I now ask that the deposition be continued until to-morrow morning, and continued from time to time until these tabulations are completed.

Notary Public. What do you say to that?

Mr. Barrett. Contestee desires we proceed, and we are willing to do everything we possibly can to assist the contestant in the taking of his testimony within the time allowed by law.

Notary Public. What time Monday?

Mr. Feigenbaum. Ten o'clock.

Notary Public. Now, your objection is noted there as to the continuance of the taking of the depositions, so we will adjourn until to-morrow at 10 o'clock.

(Thereupon, at 11 o'clock a. m., an adjournment was taken until Saturday, January 22, 1921, at 10 o'clock a. m.)

Saturday, January 22, 1921.

Pursuant to the adjournment, as above stated, on the 22d day of January, 1921, between the hours of 8 o'clock in the forenoon and 6 o'clock in the afternoon, at room 120, City Hall, I continued the taking of said depositions, as follows:

Mr. Feigenbaum. Since the continuance of the depositions from yesterday to to-day, it develops that the tabulations are not completed by the board and we therefore ask that the depositions of the members of the board of election commissioners of St. Louis be continued to Tuesday morning.

Notary Public. At what time?

Mr. Feigenbaum. Nine o'clock; since other depositions will be taken during Monday.

Mr. BARRETT. Contestee, through his counsel, suggests that the deposition continue now, as individual precincts of the various wards have been completed and those matters can be taken and introduced to the record at this time and contestee and his counsel are here now present, ready, and willing to proceed and are not consenting to the continuance of the deposition, but if contestant desires to lay it over to Tuesday, we have no objection, but we desire to state and have it noted in the record that we are ready and willing to proceed, as we do not desire any delay and because the individual record has been recapitulated in the individual precincts and a number of them are ready and could be introduced and are ready to be introduced.

Mr. FEIGENBAUM. I want the record to show that we have not yet been furnished by the board of election commissioners with the sheets showing the full tabulation, or any tabulation of the records before the board.

Mr. BARRETT. That, of course, is a mere statement and not supported by any evidence.

Mr. FEIGENBAUM. I say, if that is not a fact, contestee can so state in the record if that is not a fact.

Mr. CUMMINGS. What are these sheets you have before you?

Mr. FEIGENBAUM. These are a lot of sheets that were furnished me as to how the recount was made, but no tabulation sheet has been furnished me.

Mr. BARRETT. Mr. Feigenbaum, I want to ask you if the records you have in front of you on the table are a number of sheets which were made out by the deputy election commissioners during the recount and which were furnished you by the board of election commissioners?

Mr. FEIGENBAUM. I will say this: I have before me a number of sheets. What they contain, or what precincts they comprise, I don't know, as I have just received them within the last 10 minutes and haven't even gone through them as yet, but I assume they are the sheets referred to by contestee's counsel.

Mr. BARRETT. Will you please look at them and see and not assume at all?

Mr. CUMMINGS. Mr. Bauer can identify them.

Mr. BARRETT. Mr. Bauer, these are the sheets on the table that were furnished by the deputy election commissioners during the recount, are they?

Mr BAUER. These are the same ones that have been prepared by the clerks.

Mr. BARRETT. And furnished you by the board of election commissioners, by your watchers themselves and compared?

Mr. BAUER. They haven't been furnished us but just a few minutes ago.

Mr. FEIGENBAUM. There is no question about that.

The NOTARY PUBLIC. Don't all speak at once.

Mr. BARRETT. They were compared, Mr. Bauer, in the presence of your own watchers, by the deputy election commissioners during the recount.

Mr. BAUER. I only presume they are the papers that were prepared at that time. There are some additional notes on the papers.

The NOTARY PUBLIC. Mr. Chairman of this board, I don't think the stenographer can get everything down in the record. First you speak and then Mr. Feigenbaum and the other gentlemen. I think the matter ought to be referred to the chair—the chairman of the board, or the notary, so the stenographer can get his record straight, because two or three men speaking at the same time, it is impossible to get that in the record, and it is very important for both contestee and contestant that these things should be taken in the record.

Mr. BARRETT. I will ask Judge Arnold this question: Judge, as chairman of the board, you have furnished to Mr. Feigenbaum, counsel for contestant, a number of sheets which are now before him on the table. Will you tell us what they are and when they were made up, please?

The WITNESS. These are the data that were compiled by the accounting clerks in the recounting of the ballots at each of the tables where the recount was being conducted. There ought to be in these documents a complete memorandum of the recount in each precinct in the eleventh congressional district.

Mr. BARRETT. They were taken by your own clerks during the recount.

The WITNESS. Taken by our own clerks.

Mr. BAUER. Counsel objects and asks to have that stricken out.

Mr. BARRETT. They were given by your board to the counsel for contestant in accordance with the stipulation you were to furnish each side with a copy of the tabulation made by them during the course of the recount?

A. Yes.

Mr. BAUER. We object to that as being irrelevant, that these papers here referred to are not identified—they haven't been admitted. They are not part of the record. He is referring to some sort of papers here—the question is premature and not admissible.

Mr. Feigenbaum. Judge Arnold, these sheets have been furnished me within the last 10 minutes in this office, as far as you know?

A. I think so; yes.

Q. Well, we don't want to be technical, or urge any technical objection to the character of these sheets, but the statement made by you with reference to what these sheets are, are based, I presumed, as I have just stated—as I presume, they are the sheets or duplicate copies of records kept during the recount and you haven't really gone through each one of those to see what they are?—A. Those have been ready here for both sides.

Mr. Barrett. Judge Arnold, these sheets which were delivered by you to counsel for contestant were examined by contestant and his watchers and counsel during the progress of the recount?

A. Why, of course, the watchers had an opportunity to examine them. I couldn't say that they examined them.

Q. Well, they had the right to examine them during the course of the recount?—A. They were made up in the presence of the watchers.

Q. And they could make all the data and notations they desired?—A. I think the watchers were furnished with the same blank forms.

Q. In similar sets?—A. Similar to the blank form.

Q. And during the interval as the count progressed—that information as the count progressed——

Mr. Feigenbaum. We object to all this questioning at this time, because it is not a proper method of cross-examination and when we haven't completed or undertaken to complete our direct examination of the witness.

Mr. Barrett. Well, I just merely wanted the record to show this is not for the mere purpose of cross-examination of the chairman of the board, but for the purpose of showing simply that contestant had sufficient data and information in his possession to proceed with his examination of the members of the board of election commissioners and there was no occasion for delay on his part.

Notary Public. I think you stated that a while ago.

Mr. Feigenbaum. We want to say now that if contestee insists on going ahead with the examination of the commissioners this morning, we will proceed to do so, with the understanding that we may have to call them back Monday or Tuesday. We don't want to be put in the attitude of attempting to delay this examination. We simply suggested the continuance to Tuesday for the convenience of everyone concerned and if the contestee insists on proceeding we will go ahead right now.

Mr. Barrett. You may proceed, as you desire.

Mr. Feigenbaum. All right, let us go ahead.

Notary Public. It has been agreed by both sides that this deposition shall be continued until Tuesday morning at 9 o'clock.

Not being able to complete the taking of said depositions, I adjourn the further taking of the same until Tuesday, January 25, 1921, at 9 o'clock a. m., then to be continued at the same place and between the same hours mentioned in the annexed notice.

Frank B. Grodzki, *Notary Public.*

HARRY B. HAWES, of lawful age, being produced, sworn, and examined, on behalf of the contestant, deposeth and saith:

Direct examination by Mr. Feigenbaum.

Q. Please state your name.—A. Harry B. Hawes.

Q. And where do you reside, Mr. Hawes?—A. 4411 Westminster.

Q. St. Louis?—A. St. Louis. I have two residences; one in St. Louis County.

Q. And where is that located?—A. That is a place called Faircraft, on Gravois and Kennerly Road. My city residence is 4411 Westminster, St. Louis.

Q. What congressional district is your county residence in?—A. In the tenth.

Q. And your city residence at 4411 Westminster is in the eleventh congression district?—A. No; that is also in the tenth.

Q. Do you also reside in the eleventh?—A. No; I do not.

Q. Did you on and prior to November 2, 1920, reside in the eleventh congressional district?—A. I did.

Q. At what residence?—A. I resided in the eleventh congressional district for approximately 20 years.

Q. Did you say 20 years?—A. Twenty years. I resided on Westminster, on Windsor Place, Franklin Avenue, Bell Avenue, and Delmar Avenue, all in the eleventh congressional district.

Q. And at what address did you reside on November 2, 1920?—A. 4411 Westminster Place, in the tenth congressional district.

Q. On the 1st of August, 1920, where did you reside—what address?—A. I resided at 4411 Westminster Place, in the tenth congressional district.

Q. And when did you take up your residence at 4411 Westminster?—A. About. I am not quite sure, but about a year and a half I have resided there.

Q. You have resided there about a year and a half?—A. Yes; I purchased the place about a year and a half ago, I think.

Q. And have resided there since that time?—A. At the two places.

Q. At the two places?—A. Yes.

Q. At 4411 Westminster and in the county?—A. In the county.

Q. Did you maintain headquarters in the eleventh congressional district during the campaign of the general election of November 2, 1920?—A. I did not.

Q. Were you in any way connected with the eleventh—with what was known as the eleventh congressional Democratic campaign committee?—A. I was not—except in this: I was absent from the city in New York. I received a wire from the chairman of the Democratic congressional committee asking me if I would become a candidate for Congress. I first wired him I would not become a candidate. Later on this Democratic congressional committee wired a second and a third time, and they then insisted upon my becoming a candidate, agreed to pay my filing fee and paid it, and assured me that if I would accept the nomination it would entail no expense upon myself and my friends. That, generally speaking, is the connection that I had with the congressional committee of the eleventh district—Democratic.

Q. Was Congressman William L. Igoe chairman of that committee?—A. No, sir.

Q. Was he an officer in any way connected with that congressional committee, as far as you know?—A. Well, there was an organization created in that district called the General Eleventh Congressional Committee Organization, for the purpose of electing the Democratic National, State, and city candidates in the election of November, 1920. There was no special organization, so far as I am aware, for the exclusive purpose of electing a candidate to Congress. At one time and for a few days there was what was called—I think it was called the Harry B. Hawes Democratic Club, or something of that kind, which was immediately abandoned, because I objected to its continuance, as I wanted no special effort made for me which would draw a distinction between my election and that of the Democratic candidate for President, Senator, Congress, and the city ticket. And then this general committee for the election of National, State, and city candidates was formed.

Q. Did you conduct your own campaign, or whatever campaign you conducted, personally or did you have what is sometimes termed a committee representing you or conducting your campaign?—A. My work in the campaign consisted exclusively, or almost exclusively, in the making of campaign speeches. The general conduct of the campaign in the eleventh congressional district was conducted by this general committee organized for the purpose of electing all Democratic candidates.

Q. Now, this "Hawes for Congress Club" that you say was formed and shortly abandoned, can you give us an idea what date that was formed on?—A. No; I never attended a meeting of it; I never was in their headquarters, but I saw a sign "Hawes for Congress Club," or something of that sort, and as soon as I saw this sign exhibited I found that Mr. Cochran, I believe, was secretary of it. I immediately asked him to have it abandoned, because it didn't agree with my ideas of a campaign, and I understood that it was then abandoned.

Q. Do you know how long that was in existence—for how long a period of time before it was abandoned?—A. Well, not exactly, but I should say that it probably never had more than one or two meetings and probably was in existence a week—14 or 15 days. I am not sure.

Q. And do you know who was the chairman of that club?—A. I think Congressman Igoe was chairman of it.

Q. Was Congressman Igoe authorized by you to act as your campaign manager, if you had any such official as a campaign manager?—A. I never had such an official.

Q. Is Congressman Igoe at this time, as far as you know, taking any active interest in this contest between Bogy and yourself?—A. None other than any Democrat would who knew I had received a majority of over 2,000 and heard that a contest had been instituted.

Q. Well, do you know what interest, if any, he is taking at this time?—A. I do not. To the best of my knowledge and belief, he is doing nothing.

Q. Have you been in personal communication with him within the last 10 days regarding this contest, either by telephone, wire, or personal conversation?

Mr. BARRETT. I object to that question as being wholly immaterial and irrelevant. It has no bearing on any of the issues involved in this case. He has a right to consult anybody he pleases on any litigation and it doesn't throw any light on the subject.

The WITNESS. Do you desire an answer?

Mr. FEIGENBAUM. Yes.

A. I will freely answer any question directly or indirectly involved in the notice served upon me by contestant relating to the election, primary or any detail connected with it, but the question which you have just propounded has no bearing upon the subject matter contained in the notice of contest served upon me by contestant, and I therefore refuse to answer.

Mr. FEIGENBAUM. Well, Mr. Commissioner, I insist on an answer to that for the reason that this is only one of several questions that I intend to ask and that in order to connect them up—connect up the testimony which I expect to bring into the record relevant to this contest, it is necessary that this question be first answered.

Mr. BARRETT. Well, let us hear what the materiality of it is first. You make your statement.

Mr. CUMMINGS. What issue does it represent?

Mr. BARRETT. Show us the materiality. We are entitled to know something about that.

Mr. FEIGENBAUM. I insist I am entitled to this answer before I explain about any other question.

Mr. BARRETT. I insist that you are not.

Mr. CUMMINGS. Do you realize, Mr. Feigenbaum, that the issues are restricted to the notice and the answer?

Mr. FEIGENBAUM. I understand that very well. But my understanding of depositions of this kind is that the question is asked, the objection made and the question will be answered and then it is for the congressional committee to strike it out, if at the close of the deposition it is shown that such question was immaterial.

Mr. BARRETT. Then by your process of reasoning, you might ask him if he was related to the great grandfather of counsel for contestee, where he was born, and how many children he had.

Mr. FEIGENBAUM. Well, while that question would be ridiculous, I will grant if such a question would be asked by either side, I think it should be answered and stricken out by the congressional committee if shown to be immaterial.

Mr. BARRETT. By that same process of reasoning you might ask him—Mr. Hawes being a lawyer—if a certain client of his consulted him about a certain matter and he would be compelled to answer the question, although it came within the rule of confidential communications.

Mr. FEIGENBAUM. No. I think if this was a confidential communication he would rightly refuse to answer.

A. The commissioner can certify my refusal to answer to the congressional committee; it becomes part of the record and if the congressional committee desires to ask me this question, they will be privileged, of course, to do so. But if my examination is to relate to matters that transpired after November 2, 1920, and is to include conferences or communications with friends, counsel, advisers, and others relating to this contest, I must refuse to answer.

Mr. FEIGENBAUM. I will at this time state my purpose in asking this question, so that it may be before the congressional committee. I desire to go into the question of activities of various persons connected with this eleventh congressional Democratic committee, for the particular office in question, and since the witness has stated that Congressman Igoe was not authorized by him to act in his behalf in anything that was done regarding the campaign, I have endeavored to follow this up by later communications between the witness and Congressman Igoe.

Mr. HAWES. I want to correct the attorney——

Mr. BARRETT. Just a minute——

Mr. HAWES. Wait a minute until I get through with this—in his statement just made. I did not say that Congressman Igoe had nothing to do with the campaign in the eleventh congressional district. I did say that there was a general committee, of which Mr. Igoe was chairman or president, which had for its object the election of a Democratic President, a Democratic governor, State officers, a Democratic Congressman, and various Democratic candidates on the city ticket, and that Congressman Igoe did take an interest—an active interest in my candidacy, as he did in the candidacy of other Democrats at that time.

Mr. FEIGENBAUM. Did I correctly understand you to say that whatever interest Congressman Igoe took in your candidacy was only such a general interest as in the entire Democratic ticket?

A. No.

Q. Then will you state whether or not that eleventh congressional democratic committee, or its chairman, or any other officers of such committee, with your authority, conducted any campaign in your own behalf excepting such as was done in a general way regarding the entire Democratic ticket?—A. The committee that had entire charge of the eleventh district campaign for the various offices I described made special pleas for special candidates naturally. Congressman Igoe has been my personal friend for many years and was especially interested, I believe, in seeing that a Democrat went to Congress from the eleventh congressional district, that district having been represented in Congress by a Democrat for, I believe, over 12 years continuously. So strongly Democratic was the district supposed to be that in the last election, in the year 1918, the Republican party did not even file an opposing candidate against Mr. Igoe.

Mr. FEIGENBAUM. I move that last statement, beginning with the words, "That district was supposed to be so overwhelmingly Democratic" and what followed be stricken out as entirely immaterial to any of the issues in this contest.

Q. Will you state whether or not to your knowledge this committee referred to made any particular efforts with reference to expenditure for advertising, or otherwise, in your behalf as disconnected with general advertising for the Democratic ticket as a whole?—A. To the best of my knowledge they used every possible endeavor to secure my election, using advertising, holding meetings, and helping in every way to secure my election.

Q. In these efforts you have just outlined in your own behalf, did you take part or was that done of the initiative of the committee or members of the committee without consultations with yourself?—A. I think that I attended two meetings of the general Democratic committee of the eleventh congressional district, at one of which—if I am not mistaken—Gov. Atkinson, candidate for governor, was present, various Democratic candidates of the city ticket, and various candidates for the legislature and State senate. A general discussion of the campaign was held and different methods for campaigning for the National, State, congressional, and city candidates were discussed. Some special discussion was held relating to the situation so far as Congress was concerned, but the details of publicity and advertising was not discussed with the committee by me. This discussion related primarily to the bringing in of speakers from outside of the city. I remember on one occasion that we desired to have Mr. Bourke Cockran to come into the district—Secretary Colby, United States Senator Walsh, United States Senator Hitchcock, Floyd Jacobs, a speaker from Kansas City. My conversation with the committee was more regarding the character and kind of speeches that should be made than relating to the details of the campaign.

Q. Then do I understand that you took no part in the discussions or conclusions reached regarding advertising in your own candidacy with this committee?—A. Well, that is correct.

Q. That is correct?—A. Yes, sir.

Q. And whatever advertising the committee undertook was done without consulting with you first?—A. That statement is, in a general way, correct. I can not remember all the details of the campaign, or any specific piece of advertising. It is quite possible that there may have been special pieces which were talked over—which were discussed with me by Mr. Cochran, secretary of the committee, or even with Mr. Igoe; but speaking generally, the campaign, other than the speaking campaign, was conducted by this general eleventh congressional committee.

Q. Other than the work of this eleventh Democratic congressional committee you had no campaign manager or individual committee working in your own behalf in the November election of 1920; is that correct?—A. Excepting my individual efforts, which, in this campaign, were different from that of any other Democratic candidate in the State, for the reason that I was not entirely in accord with the campaign as it was conducted in their operations in the State. For illustration: While believing, in a general way, in the League of Nations, I disagreed openly with the League of Nations as advocated by President Wilson—did not favor article 10 as written—and, unlike other Democratic candidates in the State, I advocated that reservations or amendments should be written into the League of Nations rather along the line of the amendments suggested by ex-President Taft and other Republicans. This necessitated special consideration upon my part, and I confined my efforts almost exclusively to speech making.

Mr. FEIGENBAUM. I move all that last part relating to the witness's stand on the League of Nations be stricken out as not responsive to the question.

Mr. BARRETT. I think it is responsive to the question. It elucidates his answer.

Mr. FEIGENBAUM. When you say that your personal efforts made in this campaign were almost exclusively given to speech making, do you mean that you undertook no personal advertising in your behalf?

A. Yes. I never spent a dollar for advertising, and the only money that I spent in the campaign is enumerated in the various reports made in the form of affidavits and filed with the Clerk of the House of Representatives at Washington.

Q. The statement you have just made, that you undertook no personal advertising, or rather expended no money in personal advertising, is to be taken without any limitation?—A. That is to be taken without any limitation.

Q. Or exception?—A. Or exception.

Q. Did you or did you not contract any bills or expend any moneys or contribute to any fund with reference to your campaign, or the Democratic campaign of November, 1920, excepting such expenditures as you say you have noted in a report or affidavit made and filed with the House of Representatives of the United States?—A. That is correct. Excepting——

Q. If you did not—I said you did or did not.

(Question read.)—A. That statement is correct, excepting possibly some small items of personal expenditure for going around the district, which would not involve, I assume, a total of $10 or $15 that I didn't keep a record of.

Q. I will ask you whether in any communication from you to either Congressman Igoe or his secretary the acts or proceedings in the recount in the election commissioner's office were discussed within the last 10 days?

Mr. BARRETT. I object to that question as being wholly immaterial.

Mr. FEIGENBAUM. I submit that is material under the issue made by the contestant's notice and the answer, as I understand it.

Mr. BARRETT. Perfectly proper if they did do it.

Mr. FEIGENBAUM. If so, there is no reason why the witness should hesitate to answer.

Mr. BARRETT. And I frankly state that is none of your business.

Mr. FEIGENBAUM. Let it stand; no objection to it. It may be the business of the committee of the House of Representatives.

Mr. BARRETT. If the committee sees fit to go into it, we have no objections.

(Question read)—A. Congressman Igoe and his secretary, Mr. Cochran, are in Washington, D. C., and because of the individual interest of Mr. Cochran in the election, at the conclusion, I believe, of each day's recount in the election commissioner's office, I telegraphed the results by wards. That is to say, that the first ward showed a gain of 52 votes for Bogy; the third ward showed a gain of 1 vote for Hawes; that the fourth ward showed a gain of 166 votes for Bogy; that the eighteenth ward showed a gain of 37 votes for Hawes; that the nineteenth ward showed a gain of 61 votes for Bogy; the twentieth ward showed a gain of 137 votes for Bogy; the twenty-second ward showed a gain of 102 votes for Hawes; the twenty-sixth ward a gain of 9 votes for Bogy; the twenty-seventh ward a gain of 183 votes for Hawes, giving Bogy an ostensible gain of 102 votes. I also stated that in two precincts I was entitled to 20 votes and in another 29 votes, which would give Bogy a total gain in 150 precincts of only 43 votes. I also stated in this telegram that if those voters who had clearly written in my name on the ballot, but had neglected to scratch Bogy's name were counted for me that the total recount would show a net gain for me and a loss for Bogy. Before I sent him the first telegram, I conferred with Mr. Bogy, comparing the net gains and losses made in the recount of that day and told him that I wanted the information to wire to Cochran and later dictated a telegram, through the courtesy of a stenographer in the election commissioner's office, making no concealment at any time of these reports.

Mr. FEIGENBAUM. What you have just outlined as gains or losses in the different wards was what you reported to Mr. Cochran?

A. Yes, sir.

Q. With the comments you have suggested?—A. They were in substance—that was the substance of my report.

Q. I understand; not the verbiage, but the substance.—A. I would like to add that the various people connected with the election commissioner's office, I think, knew all about my giving out this information, which did not in any way violate the oath of secrecy which related to the disclosing of the character of any particular ballot.

Q. Mr. Hawes, as I understand you, when you were first asked to file for this office you were out of the city?—A. Out of the city; yes, sir.

Q. And were requested by whom?—A. By Senator Brogan, chairman of the eleventh congressional committee, by wire directed to me at the Biltmore Hotel in New York. In answer to his wire, I flatly refused to become a candidate and suggested other names.

Q. When you stated at the outset that you had resided in St. Louis for the past 20 years—something of that kind——A. I have resided in the city of St. Louis since 1887.

Q. When you make this statement, do you include the county as part of the city?—A. I have always retained my legal residence in the city of St. Louis.

Q. You were not born in St. Louis, as I understand?—A. I was born in Covington, Ky., November 15, 1869, and moved to St. Louis when I was 17 years old—1887.

Q. Were you in the city of St. Louis on November 2, 1920—that was election day?—A. Yes, sir.

Q. And were you in the eleventh congressional district, or thereabouts, the greater part of election day?—A. I was not in the eleventh congressional district on any part of election day. I did not go into the eleventh congressional district.

Q. You have made a statement in your answer to contestant's notice of contest of your purported election to the effect that campaign moneys were supplied for the election of Republican candidates to Congress in the other districts in Missouri and were withheld from this district. Was that made of your own personal knowledge or hearsay?

Mr. BARRETT. Wait a minute. I object to that question as applied to this witness. That is an allegation of separate proof. It makes no difference where he heard it from or how he heard it. I submit it is an effort also on the part of contestant to elucidate information within the knowledge of counsel for contestee, and it is a mere matter of proof for them.

Mr. FEIGENBAUM. I submit it is a question regarding his statement made above his own signature and proper for this witness to answer.

Mr. BARRETT. What difference does it make how he obtained it or whether he may have obtained it?

A. Mr. Bernard P. Bogy, contestant, told me that he was unable to receive assistance from either the State committee or the national committee; that they had deserted him; that other congressional districts were given money, but that money was refused for the eleventh congressional district. A man whose name I can't call to mind right now, but may remember it later, informed me that some of Bogy's friends applied to the Republican State committee for financial assistance and that it was refused.

Q. Are those the only sources of information that you had at the time you filed this answer or served this answer on contestant with reference to the particular statement just disclosed by you?—A. Those were some of the sources of information.

Q. Will you tell us some of the other sources of your information in this regard?—A. I don't recollect at this time the names of the particular men who gave me this information.

Q. Was this information given to you by anyone prior to November 2, 1920, or did it all come later?—A. This information came after November 2 in conversations that I had regarding Mr. Bogy's contest. I had several meetings with Mr. Bogy and tried to persuade him not to bring this contest, explaining the law to him as I understood it and proposing that he should select a committee of seven prominent disinterested Republicans who would go over the evidence which he had in his possession, agreeing to unreservedly answer any questions relating to my campaign for their information. It was during these conferences to prevent the expenditure of large sums of money by myself and the city that these matters came out.

Q. When you say "these matters came out," do you refer to the statement of Mr. Bogy or of others?—A. By Mr. Bogy and others.

Q. Can you now recall the names of any persons other than Mr. Bogy?—A. Not at this particular moment.

Q. I will ask you whether or not you can recall whether the persons from whom you received this information were Republicans or Democrats?—A. Republicans.

Q. Without exception, or were there also Democrats who furnished this information?—A. Republicans, as I best recollect.

Q. And can you give us any idea about how many persons communicated this to you, whether two or three or a dozen or fifty or a hundred—your best recollection?—A. I should say there was a very limited number of persons.

Q. Limited to how small a group—approximately?—A. Two or three.

Q. Did Mr. Bogy tell you that the national Republican organization was notified long before the date of election that the district would be carried by yourself?—A. No.

Q. Will you give us the source of information from which you determined that statement as included in your answer?

Mr. Barrett. Just a minute. I just want to get in an objection to this line of investigation. It is a plain effort on the part of counsel for contestant to have the witness disclose the source of his information who his witnesses are. That question has been decided adversely to him by our own supreme court in the case of Devoy against the United Railways Co., and it is well-settled law in this State and it is just a purely fishing expedition.

Mr. Feigenbaum. I want to say that we have no reason in asking this question other than to elicit from the witness whether he had good cause to include a statement of that character in his answer.

Mr. Barrett. Just the same as any other litigant filing an answer, he may allege it if he thinks he can prove it; and if he fails in his proof, his allegations are not sustained.

(Question read.)

Mr. Barrett. I object to that question, because it is not proper testimony in chief. If the contestee submits any evidence during his time to support that allegation it will then be proper for contestant to submit evidence tending to disprove that allegation in rebuttal; but I object to it for the further reason that it is a fishing expedition on the part of contestant to elicit information within the knowledge of contestee as to who the witnesses are, which question has been decided adversely to him in our own Supreme Court in the case above cited; and I will say that is not the law, as I understand it, and the witness need not answer the question. If contestee goes into that phase of the case—that is, offers any testimony in support of the allegation read by counsel for contestant—then it will be perfectly proper for contestant to put the contestee on the stand and elicit any information along those lines he may desire This whole line of examination is premature and is a matter that should only be gone into in rebuttal and not examination in chief. I object to it for the further reason that the witness has already answered it two or three times.

Mr. Feigenbaum. I submit there is nothing in this record on that yet. This is the first time it has been put.

Mr. Barrett. You want to get the source of information to support that allegation.

Mr. Feigenbaum. On this particular statement this is the first time the question was asked, and I ask in a general way from what sources the information contestee concludes this statement.

(Question read.)

A. Yes.

Mr. Feigenbaum. In a general way, tell us in any way you choose whether the information came from Republican sources or Democratic sources.—A. Republican sources.

Q. Do you care to state who those Republicans are?—A. I don't care to embarrass a prominent Republican by giving his name at this time, but the records of your State committee and national committee—Republican committee—will disclose the fact whether the statement is correct or not.

Mr. Feigenbaum. I think at this time that will be all. If something comes up that we may want to recall you, you will be around—there will be no objection to recalling Mr. Hawes as a witness?

Mr. Barrett. Not at all—any time you want.

Mr. Feigenbaum. Let me make a little statement. This witness was subpœnaed for Wednesday, the 26th, but originally—some few days ago—stated that he expected to leave the city Tuesday evening, and we therefore undertook to take his deposition this morning. Since then we have learned from Mr. Hawes that he does not expect to leave the city at this time, but is willing to give his testimony this morning and makes no objection to testifying at this time.

Cross-examination by Mr. Barrett:

Q. Mr. Hawes, when were you born? A. I was born in Covington, Ky., November 15, 1869.

Q. When did you come to St. Louis?—A. I think it was in June, 1887.

Q. And have you resided in the city all that time?—A. Continuously, except various absences abroad.

Q. Well, have you voted any other place than in the city of St. Louis at any time since your coming here to this city?—A. I have not.

Q. You have made the city of St. Louis your legal residence during all of that time?—A. I have.

Q. This residence that you speak of in the county is merely a summer home, is it?—A. Summer home.

Q. Now, are you connected with any civic organizations in this city or State?—A. Civic or civic and social?

Q. Civic and social?—A. I am a member of the American Bar Association, the Missouri State Bar Association, the St. Louis Bar Association, the American Society of International Law; I am a member of the Chamber of Commerce, the Real Estate Exchange, the Civic League; I am president of the Federated Roads Council of St. Louis, which represents all the road interests of the civic and social organizations of this city; I am president of the Missouri Federated Association, an organization of some 25,000 members and affiliated members, which recently passed constitutional amendment No. 6 for a $60,000,000 bond issue for good roads; I am a member of the St. Louis Club, the Racquet Club, the Missouri Athletic Club, the Noon-day Club, the Century Boat Club, Algonquin Golf Club, Sunset Hill Golf Club, Artists' League, the Players' Club, the Million Population Club, and various other organizations that I can not recall at the present time.

Q. Mr. Hawes, had you expressed your views prior to your nomination as to your attitude on the covenant of the League of Nations, particularly with respect to article 10?—A. I delivered an address, or rather wrote an article on this subject some time in the summer of 1919 on my resignation from the Army. This address was published in all of the St. Louis newspapers at the time and was afterwards inserted in the Congressional Record by Senator Thomas, of Colorado, or Senator Reed, and some 200,000 copies circulated in St. Louis, Mo., and other States. My position on the League of Nations was well known to the voters of the eleventh congressional district as being opposed to the position of President Wilson at that time. I believed that certain amendments and reservations should be written into the covenant of the league and described these amendments and reservations and advocated the ratification of the league by the Senate and the President in its revised form. As far as I know, with the exception of Senator Reed, I was the only Democrat in Missouri who took that public position.

Q. And you stated your attitude particularly with reference to article 10, I believe, at that time?—A. Yes.

Q. Now, you may state, if you recollect, Maj. Hawes—by the way, you said something about discharge from the Army. Were you in the Army?—A. I served as captain in Military Intelligence, Psychological Branch, and was assigned to the General Staff. Our work consisted in what was called positive intelligence—that is, military intelligence relating to the war, and at the conclusion, or about the time of the armistice, I was ordered abroad and ultimately served as assistant military attaché to the United States embassy in Spain.

Q. You are speaking of the late war with Germany?—A. The late war.

Q. When did you return from the Army, do you recollect?—A. I think it was—I think I secured my discharge in the month of June or July, 1919.

Q. What rank did you have?—A. While serving in the Military Intelligence I had the rank of captain; before my discharge I was promoted to the rank of major in the reserves.

Q. You may state, Maj. Hawes, if you recollect whether or not men who are opposed to the League of Nations as submitted by the President to the Senate, and particularly those who were men of the Democratic Party and who supported Harding, whether or not any people of that class made any effort in your behalf personally, such as writing letters and speaking to people?—A. I think that there is no doubt but what they did. In addition to that support, because of the good-roads fight which was then engrossing the State of Missouri, many Republicans supported me because of my activity in that respect. One letter was sent, I know, to the voters of the eleventh district with some 10 or 11 names signed to it, I think all of whom were Republicans, and I am quite sure I received some support from members of the American Legion who were Republicans.

Q. Do you know whether or not, Maj. Hawes, you received any support or indorsement from organized labor in the city of St. Louis?

Mr. FEIGENBAUM. I object to that at this time as being an improper manner of determining that question.

Mr. BARRETT. I ask him if he knows.

Mr. FEIGENBAUM. And is a conclusion of the witness.

A. Yes; I received the official indorsement of union labor in my district and they actively supported me in the campaign.

Mr. FEIGENBAUM. I object to the last part and move that it be stricken out unless it is shown what was done, the last statement being a conclusion of the witness.

Mr. BARRETT. You resided in that district for a long time?

A. I was married while I lived in that district, went to the law school while living in that district, one or both of my daughters were born in that district, and I have a large speaking acquaintance with the voters of that district extending over a period of 20 years.

Q. Now, Major, can you tell us whether or not there is any considerable portion of the residents of that district who are affiliated with organized labor organizations?—A. In my opinion there are more members of union labor residing in the eleventh congressional district than any, either the tenth or twelfth congressional districts, which comprise the three districts within the city of St. Louis.

Q. Now, you spoke about going to law school. You are a licensed practicing attorney, I believe, for a number of years?—A. I have been practicing law for 24 or 25 years.

Q. Now, do you know in a general way, Maj. Hawes, about how the election was conducted in the city of St. Louis as a whole, in a general way, whether it was quiet and orderly or whether there were disturbances, if you know?

Mr. FEIGENBAUM. I object to that unless it refers to the eleventh congressional district.

Mr. BARRETT. Well, in the eleventh congressional district, if he knows?

Mr. FEIGENBAUM. I object to that further on the ground that it is a conclusion, unless the incidents or facts going to show the orderly or disorderly conduct of the election be shown.

Mr. BARRETT. Withdraw that question. I will put it another way.

Q. Maj. Hawes, did you hear any complaint of any kind, either by individuals—personal communication with anybody, over the telephone or through newspaper reports as to whether or not the election of November 2, 1920, was orderly or disorderly in the eleventh congressional district?

Mr. FEIGENBAUM. I object to that for the reason that it is entirely immaterial that this witness has read newspaper reports and whether he has heard reports of orderly or disorderly conduct of election as not affecting the true condition of such election.

A. The election in the eleventh congressional district was unusual and abnormal. Some time in July or August of the year 1920 the nineteenth constitutional amendment admitting women to the right of suffrage almost doubled the voting population in the eleventh congressional district. The legislature took no action to remedy this defect. There were, in 1916 and 1918, 132 voting precincts in the district and I think the total approximate votes cast at that time—at both of those elections—was in the neighborhood of 35,000 votes. In the last election there were cast some 69,000 votes and to take care of those additional 30,000 or 35,000 votes, the election commissioners were able only to add 23 voting precincts. Naturally, this brought congestion at the polls, but from the newspaper accounts which I read and from subsequent conversations with committeemen and others, it was an unusually quiet and orderly election. Although the amount of work placed upon the judges and clerks of election, the large number of ballots to be counted and tabulated threw an unusual burden upon the election officials, but I heard of no disturbances or disorder, nor did I read of any in the newspapers, excepting there might have been some individual cases.

Mr. FEIGENBAUM. I move that entire answer be stricken out, first, because the major part of it is not responsive and, secondly, because it is based on conclusions and does not give any facts.

Mr. BARRETT. I understand that counsel for contestant reserves the right to recall Mr. Hawes again?

Mr. FEIGENBAUM. Yes.

Mr. BARRETT. With that understanding, reserving the same right, we will call him in any time—I will quit here—reserving the right, however, for further cross-examination.

Redirect examination by Mr. FEIGENBAUM:

Q. Major, I didn't get your occupation at this time?—A. Lawyer.

Q. Practicing law at this time?—A. Yes, sir.

Q. You were associated with Jones & Hocker, weren't you at one time?—A. Yes.

Q. That is yourself in the firm of Jones, Hocker, Hawes & Angert; that is correct?—A. Yes.

Q. At this time you are practicing individually?—A. Yes.

Q. Where is your office, may I ask, Major?—A. Room 15—my suite of offices—the entrance is 1530 Boatmen's Bank Building.

Mr. FEIGENBAUM. That is all.

Mrs. ESTHER FLEMING, of lawful age, being produced, sworn, and examined, on the part of the contestant, deposeth and saith:

Direct examination by Mr. FEIGENBAUM:

Q. Will you please state your name, Mrs. Fleming?—A. My name?

Q. Yes.—A. Mrs. Esther Fleming.

Q. And where do you live, Mrs. Fleming?—A. 3420 Franklin Avenue.

Q. Are you married?—A. Yes, sir.

Q. What is your husband's name?—A. Benjamin W. Fleming.

Q. You are over the age of 21?—A. Yes, sir.

Q. How long have you lived at that address, 3420 Franklin Avenue?—A. It will be—well, we lived at 3412, but we have moved to 3420 about three years.

Q. And did you register—at what precinct did you register, if you registered?—A. Well, I don't know what precinct it is; it is out on Grand Avenue and Franklin.

Q. Do you know whether or not that is the first precinct of the twentieth ward?—A. I don't know what precinct it is.

Q. Do you know what ward it is in?—A. Twentieth ward.

Q. It is in the twentieth ward. And the polling place is at the corner of Franklin and Grand, you say; is that correct?—A. Yes, sir.

Q. Did you go there on November 2, 1920, to cast your vote?—A. Yes, sir.

Q. And what time of the day did you go?—A. I went there at 1 o'clock and stayed until 3, then I went back at 4 and stayed until 7 until the doors closed.

Q. And did you vote?—A. No, sir.

Q. You were first there from 1 to 3, I understand?—A. Yes, sir.

Q. And were there many people in front of you—how many people, about, were in front of you when you came there at 1 o'clock?—A. There was about—well, I will say 40 or 50.

Q. Forty or fifty people. Did you see anything there unusual or irregular that kept the line from moving?—A. No; because I wasn't close enough to see into the place.

Q. Now, I mean with reference to the outside where you stood out on the street, did anything occur that kept the voters standing in line and waiting to vote—from going in there in the proper turn?—A. Well, they took men out of the back of the line and taken them in and let them vote ahead of us that was standing in line.

Q. You say, "they." Who do you mean?—A. Some man that was standing around there; I don't know who he was.

Q. And were there many of those taken in?—A. I only saw two.

Q. You only saw two. Now, what, if anything, was said to you while you were in that line by any man or woman?—A. By a woman?

Q. What was said?

Mr. BARRETT. That is a kind of general question.

Mr. FEIGENBAUM. All right; I will limit it.

Q. What, if anything, was said to you by any woman with reference to your desiring to vote at that time?

Mr. BARRETT. I object to that question whether "any woman."

Mr. FEIGENBAUM. Well, I have asked what she said, and by what she will say, I think it will be a general identification—her interest.

Mr. BARRETT. Too general.

Mr. CUMMINGS. What woman?

Mr. FEIGENBAUM. The woman will be identified by her conversation.

Mr. BARRETT. You must first show who the woman is and the connection she had with the election—whether she was an election official or had charge of the election.

Mr. FEIGENBAUM. I am not charging she is an election official, but we will show her interest with reference to the election and connecting it up with the general conditions at that precinct on that day.

Mr. BARRETT. Well, supposing the woman was interested and suggested she vote, or that she vote a particular way. What has that to do here with the conduct of the——

Mr. FEIGENBAUM. The competency of the statement will be shown. If not competent, it will be stricken out.

Mr. BARRETT. I object to the question in the present form at this time.

Mr. FEIGENBAUM. Go ahead.

A. Well, it was a well-dressed lady come to the line and tried to pull me out of line, and asked me if I was going to vote the Democratic ticket, and she tried to pull me out of the line and I didn't answer her. I just shook my head, no.

Mr. FEIGENBAUM. What had she done just before that with reference to other voters in the line?

A. Why, she taken—

Mr. BARRETT. I object to that, too.

A. She taken a lady and her daughter from 3410 Franklin Avenue into vote ahead of all the line.

Q. And did she indicate why she took them?—A. No; she didn't.

Q. Do you know whether or not they were Democratic voters or Republicans—if you don't, say so?—A. Well, no; I don't.

Q. She did ask you—well, did she say anything about letting you vote ahead of the others?—A. All I know, she said that we could get in if we voted the Democratic ticket.

Q. She said that to you. That is, when you shook your head, indicating what, yes or no?—A. I said no.

Q. You said no, and she let you remain there?—A. Yes, sir.

Q. And you didn't vote?—A. No, sir.

Mr. FEIGENBAUM. That is all.

Mr. BARRETT. You may go.

BENJAMIN W. FLEMING, of lawful age, being produced, sworn, and examined on the part of the contestant, deposeth and saith:

Direct examination by Mr. FEIGENBAUM:

Q. What is your name?—A. Benjamin W. Fleming.

Mr. BARRETT. I don't see his name on the list. I will state that at this time counsel hasn't served us with any notice to take the deposition of this witness. There is a Mrs. Esther Fleming, 3420 Franklin Avenue, but not Benjamin W. Fleming.

Mr. FEIGENBAUM. Do you object to his testifying at this time?

Mr. BARRETT. Certainly; hasn't given us any notice.

Mr. FEIGENBAUM. I will say now that I didn't know that we overlooked the name of Benjamin Fleming in the notice, and since objection is made, we will have to let the witness be excused at this time.

(Thereupon, at 12.40 p. m., recess was taken until 2 o'clock p. m. the same day.)

Pursuant to the above recess, the following proceedings were had:

Rev. EUGENE HANSMANN, of lawful age, being produced, sworn, and examined, on the part of the contestant, deposeth and saith:

Direct examination by Mr. FEIGENBAUM:

Q. Will you please state your name?—A. Eugene Hansmann.

Q. Where do you reside?—A. 3419 Franklin Avenue.

Q. What is your vocation?—A. Minister of the gospel.

Q. And what church do you officiate at?—A. The Advent Christian Church.

Q. Are you connected with any church alliance or anything of that kind?—A. I am a member of the Church Federation of the City of St. Louis.

Q. How long have you resided in St. Louis?—A. A little over 30 years.

Q. And how long have you resided in the eleventh congressional district?—A. Between the tenth and the eleventh the same time.

Q. How long have you resided at the present address?—A. About nine years.

Q. Are you a member of the Ministerial Alliance?—A. Yes, sir.

Q. At this time?—A. Yes, sir.

Q. Have you ever acted as an election official in the city of St. Louis?—A. I have; yes, sir; in past years.

Q. For how long a period of time?—A. Why, it was what would be called two terms under the election commissioners.

Q. In what capacity?—A. In the nature of clerk.

Q. An election clerk?—A. Election clerk.

Q. Of what ward?—A. Ward 20, precinct 1.

Q. Is that in the eleventh congressional district?—A. Yes, sir.

Q. And is that in the same ward and district that you now reside in?—A. Yes, sir.

Q. You no longer are acting in that capacity?—A. No, sir; I sent in my resignation about two years ago on the ground that I could not officiate with the men that was being placed in office and my duties took me other wheres.

Q. You refer, I suppose, to the officials in the polling place?—A. At the polling place.

Mr. BARRETT. That had nothing to do with this last election?

A. Not the last election.

Mr. BARRETT. I move that all be stricken out as having no bearing on the issues in this case.

Mr. FEIGENBAUM. When did you send in your resignation?

A. Well, two years ago.

Q. Do you know whether or not the same judges and clerks are now in the first precinct of that ward, or any of them?—A. Not at this last election, they were not.

Q. There were new ones?—A. New ones.

Q. On the morning of November 2, 1920, were you near the polling place of the first precinct, twentieth ward, in the eleventh congressional district?—A. I was; yes, sir. I went there soon after 6 o'clock with the expectation of getting in line to vote. When I went there I found a very great crowd in line, and being very busy at the time I did not step in line at that time.

Q. Did you go back later?—A. I went back shortly afterwards and found the same condition of affairs, only much larger, and continual arguing going on inside of the polls. Now, the question might be asked me, How do I know there was continual arguing going on? The polling place is a tailor shop and has a very large window and anybody could naturally see into it. We could see by the gestures of several that went in, being on the inside, what was going on.

Q. You say there is a large open plate-glass window?—A. Very large plate-glass window. There was in the morning a man named Gallagher kept going in and out of the room on the inside.

Q. Who is this Gallagher?—A. I understood he was the committeeman of the Democratic Party in that ward.

Q. The twentieth ward?—A. Twentieth ward central committeeman.

Q. Now, who was he arguing with, if you could see?—A. He was arguing there, according to what I could see, with the judges and clerks.

Q. And how long a period of time was he in there?—A. A considerable time—and it created quite a lot of feeling on the outside—quite a lot of demonstrative feeling on the outside, who saw what was going on. Utilizing the phrase, it was done for delay, so they couldn't get in.

Q. How often during that time were you up in front of that place?—A. I went back again somewhere about 9 o'clock and then again I went back at 11, and I went back again after lunch, and I went back again after 3 o'clock.

Q. Was this man you referred to as the Democratic committeeman—was he around there most of these times?—A. A great deal of the time; yes, sir.

Q. And were people being permitted to go in to vote while these arguments were taking place?

Mr. BARRETT. Wait a minute. I object to that question as being leading. Let him state the facts.

Mr. FEIGENBAUM. I am only calling his attention to something.

Mr. BARRETT. The doctor is an intelligent witness. Don't lead him. He is intelligent enough and he can answer.

(Question read.)

Mr. BARRETT. You can answer, Doctor—he isn't like an ordinary witness. This man is a minister and he can answer questions.

Mr. FEIGENBAUM. Certainly. I have asked him whether people were permitted to go in.

Mr. BARRETT. You know how to ask him.

Mr. FEIGENBAUM. Was the voting going on while these arguments were taking place?

A. Practically none; no, sir.

Q. During those arguments, you say the voting was stopped?—A. During those arguments the voting was stopped, with the exception of instances where machines would drive up with certain occupants in wearing badges, and banners was on the back of the machine and the police at the door would immediately pass them in.

Q. Where would the machine stop—how close to the door?—A. Right there; some of them would stop on the "Y," of which I was former secretary, and some of them would stop on that "cut-off" curve at Strauss's photo place.

Q. The "Y" you refer to is the Y. M. C. A.?—A. The Y. M. C. A. I was war secretary for a number of years during the war.

Q. You say machines would stop there and allow persons to go in to vote?—A. Yes, sir.

Q. Would they go in ahead of the line?—A. Positively so.

Q. What banners were on these machines? You said that banners were on there?—A. Sure; banners on the back of the machine—"Harry B. Hawes—vote for Harry B. Hawes."

Q. Did these banners indicate whether they were Democratic badges?—A. Democratic badges. Some of them were white badges, if I ain't entirely mistaken, and the printed matter was either black or a dark blue, and upon that was "Harry B. Hawes," but I don't know whether they were precinct men or ward workers or what they were, but they carried badges and they were the ones that would pass folks in and bring them to the polling place.

Q. What, if anything, did the police officer do there?—A. He would open the door and let them in at that individual time.

Q. How often did that occur during the day—while you were there?—A. Well, unfortunately every time I went there the same affair seemed to occur and seemed to happen. I most noticeably noticed it in the afternoon somewhere about 3 o'clock.

Q. Was there any protest from the voters?—A. Yes, sir; very remonstrative; quite a number of them remonstrated very loudly on the matter. Some asked me to go up the street and get an officer.

Q. Was there an officer at the polling place?—A. On the inside there was one.

Q. Were there any police officers in that vicinity at any of these times you refer to?—A. Not directly. There was in the morning; yes. I happened to see Capt. Johnson there and shook hands with him, and I happened to see a man I knew afterwards by the name of Sargent Reeves, that introduced me to Johnson, but Johnson said he knew me.

Q. What, if anything, else took place with reference to regularity or irregularity of voters casting their ballot in their turn with reference to the place in line?

Mr. BARRETT. I object to the question and the manner in which it is put, indicating that there was regularity or irregularity—calling attention to the fact. The doctor will answer your question.

Mr. FEIGENBAUM. I tried to do that, Mr. Barrett, and you objected to my leading him.

Mr. BARRETT. I objected to your leading, and I object to your characterizing and asking that here. Just call for the facts and the doctor will answer.

Mr. FEIGENBAUM. If I call for the facts, I am leading.

Mr. BARRETT. You know how to conduct an examination.

Mr. FEIGENBAUM. I am trying to conduct it as I know how.

Q. Doctor, were the persons in line waiting to vote permitted to go in their regular turn?—A. Positively not; no, sir.

Q. In what way weren't they permitted to vote in the regular turn?—A. Well, as I stated a little while back, the argument continued going on on the inside and then again there were individual cases positively where there was somebody picked out—individual in the line, by the so-called ward or precinct worker. Whenever I use that expression, ward or precinct worker, they were one or the other. But they would go and ask him the question over here, "Who are you going to vote for? How are you voting?" And the moment they mentioned—got out which party they represented, they opened the door.

Q. Who were these men asking the questions? Did they carry badges indicating they were Republican or Democratic?—A. As I said before, white badges with blue, with the wording "Harry B. Hawes."

Q. Now, Doctor, did anything occur on the afternoon where violence of any kind was used on you or anybody else?—A. Yes, sir.

Q. Tell us about that incident.—A. In the afternoon I went to the post office, which is next door to the polling booth—the post office is run by the postmistress or postmaster by the name of Lohman. I purchased some stamps and had mailed some letters in the mail box just on the outside, when the first man standing in line—one of the want-to-be voters to go in the booth says, "Please, won't you go up to the corner and get the sergeant for us? We have been standing here for the last three hours, and look at this bunch keep going in at the front door."

Mr. BARRETT. I am going to move that all that be stricken out, because that is hearsay testimony and what somebody else said. Doctor, I am going to suggest——

Mr. FEIGENBAUM. He is only indicating——

Mr. BARRETT. Please don't state anything as to what somebody else said. Just say what you saw and said and done. If somebody else said something, let them testify.

The WITNESS. Of course, I was there——

Mr. BARRETT. In other words, we don't want hearsay testimony.

A. I understand that.

Mr. FEIGENBAUM. You were requested to bring an officer?

A. I was requested to bring an officer; yes, sir; and I went to the corner and I saw the sergeant coming across from the corner of Hunt's saloon with a man by the name of McCuddy, and they were together coming across Grand Avenue, and when he struck the sidewalk I said, "Sergeant, you are wanted down the line." He walked on down with me, and I says, "This is the gentleman that wants you; they are making quite a complaint." A number of men—just at that same moment another machine drove up and some men got out and these two men—particular two men that had these badges on escorted the four or five men into the polling booth. I said, "Sergeant, do you think that is a correct matter? Do you think that is right suffrage doing that?" And the same sergeant immediately knocked me down.

Q. What else did he do, if anything?—A. I got to my feet—went into the post-office building for protection. He followed me in there, and in there he most brutally beat and assaulted me. He kicked me from behind, and he couldn't kick me because I was in a very narrow passage, like this—he could only hit me from behind and kick me; but at that time blood was oozing out of my ears pretty freely. On account of the tables, he got me around in a room where the postmistress eats lunch; that is a larger room, and he got me in there and threw me around, and, with very profane language, he jumped behind me with his foot and kicked me again as he was leaving, on my body. I went unconscious and finally come to—I remember—of course, not remembering anything that happened while I am unconscious; but when I came to another officer, by the name of Barney, was over me, and he said, "I got to take you to the box." I said, "Anywhere out of this man's cruel practices—anywhere at all." The same sergeant kept on even at that time, still beating me most viciously and kicking me—even over to the box, and the crowd remonstrated—very strongly, and some of the Y. M. C. A. officials came out and remonstrated, and he left the box for a moment to go after them—using the common parlance of the language and in his intoxicated condition, because he was very intoxicated.

Mr. Feigenbaum. The sergeant?

A. The sergeant. He turned around again and kicked me most unmercifully in the groin, which was the cause of a severe rupture on me, and I am now under a heavy brace because of that kick. He called the wagon—he did not, but the officer that had me in charge—had me by the arm very strongly, and I said, "Barney, there is no need of that, please. I won't leave you—I won't leave you for $10,000. I am determined you take me to the station house." I said, "I want you to take me." I didn't know his name at that time, except by the officer calling him Reeves. He wouldn't go down in the wagon—he sent this officer and these two men that had the Harry B. Hawes badges on—they went down in the same patrol wagon, and going down in the patrol wagon to the Dayton Street police station these two unmiserable, unfortunate representatives of our city, or whatever you may call them, used the most vile and foulest language they could use. "You son of a bitch, we ought to kill you. If it was dark, we would kill you." That is exactly the language. We went to the station house at Dayton Street. Going up to the desk, I gave my name, as I have given it to you gentlemen, Eugene Hansmann, and the moment I gave the name Hansmann I was assaulted most viciously by the desk sergeant, and especially by these same two men, right there in the station house. "Hang the son of a bitch—hang him up. Why, he is a Dutchman. Hang him up and kill him," and all that sort of language; and I turned to Capt. Johnson—he was standing right there in the station house—and I said, "Captain, is this what a 4-minute man has to contend with and go through with? I am an American citizen; I have worked very hard in this city for my country; I lost a boy on the battle field. Is this what I have to contend and go through with, sir?" I says, "I protest against this most strongly." And he says, "You go on home, you son of a bitch—go on home."

Q. Now, these particular epithets——A. I am sorry to use that language, but you gentlemen asked it, and I am under oath and I give it to you as it was given to me.

Q. Are those the exact words used and simply repeated by you?—A. Yes, sir. I might say this, gentlemen, there can be no misinformation on the matter, and the officer that took me in to Capt. Johnson—he asked him, "What is the charge?" He says, "I wipe my hands off of it; Reeves sent me down." He says, "Where is Reeves?" The officer says, "I won't give any answer, and I won't have anything to do with it."

Q. Doctor, are there any other members of your family or your household who are registered voters in that precinct?—A. Yes, sir.

Q. I will ask you if any of them voted?

Mr. Barrett. Wait a minute.

Mr. Feigenbaum. On the 2d of November, 1920?

Mr. Barrett. Wait a minute. I submit, in the first place, that is pure hearsay and the best evidence of that is the registration books themselves.

The Witness. Well, there is one I could speak for—is my own beloved wife. Naturally she wanted to vote and couldn't.

Mr. Feigenbaum. I think that is proper in the deposition, because we are not going through the entire books of election and ask whether every member voted.

Mr. Barrett. You call for all that in your subpœna duces tecum, and I asked you what you wanted and what you wanted to incorporate. The records are the best evidence as to who the persons are that are registered and as to who voted. There are two poll books showing whether they voted and the persons themselves, and I think it is the rankest hearsay to ask whether Bill Smith voted or whether Brown or anybody else voted. The doctor will have to testify what his wife told him. Now, that is clearly incompetent.

Mr. Feigenbaum. He knows whether she was in the house all that day.

Mr. Barrett. No, he don't. I ask that the answer of the doctor as to his wife be stricken out.

Mr. Feigenbaum. Dr. Hansmann, did you vote at the election on November 2, 1920?

A. No, sir; I was so beaten I was not able to. I was under a doctor's care for 15 days after that—Dr. Theodore Conzelman is my physician. I was under his care from the beating that I received.

Q. Are you a Republican?—A. I am; yes, sir.

Q. You stated you had acted as a Republican clerk?—A. The question wasn't asked me.

Q. You said you acted as clerk?—A. As a clerk; I wasn't asked.

Q. Were you acting in the capacity of a Republican clerk?—A. Yes, sir.

Q. Were you asked by anyone that day as to whether or not you intended casting your ballot—casting the Democratic or Republican ballot?

Mr. Barrett. I object to that as being too general and immaterial and incompetent under the issues in this case. It couldn't be binding upon the contestee.

Mr. Feigenbaum. Withdraw that question.

Q. Were you asked by anyone wearing any of these badges that you have described as to how you intended voting?

Mr. Barrett. I object to that as not being binding. The mere fact that they had some badges on don't indicate who they were for or who they represented.

Mr. Feigenbaum. I think that ought to go in the record.

Mr. Barrett. I have made my objection.

Mr. Feigenbaum. You may answer the question.

A. I was asked by the same two men that went down in the wagon with me.

Q. What did they ask you?—A. Just previous to the trouble with the sergeant.

Q. And what reply did you give to them?—A. I told them very frankly I thought I was old enough and I was an American citizen to know my own suffrage rights without being interrogated by anybody.

Mr. Feigenbaum. That is all.

Cross-examination by Mr. Hawes:

Q. Where were you born, Doctor?—A. I was born in Berlin, Germany.

Q. What is the denomination that you belong to, Doctor?—A. The Advent Christian denomination, sir. Previously I was with the Union Methodist Episcopalian Church and have been about 30 years associated with Dr. Young of this city.

Q. How many denominations of this same kind you say you are a member of are in the city of St. Louis?—A. How many in this city?

Q. Yes.—A. We have but one church in this city, sir.

Q. Only one church of that denomination?—A. Only one church of that distinct denomination in our city, but we have 32 churches of the Christian Church.

Q. Is that the church that is commonly called "The Holy Rollers"?—A. No, sir; by no means; no connection whatever. I don't know of them or know of the name either.

Q. Doctor, did you prefer any charges against this officer that you say assaulted you?—A. Have I preferred charges against him?

Q. Yes.—A. I have not, sir.

Q. Have you asked for a warrant for his arrest?—A. I have not, sir. I might be more specific there; I have reasons and I will say to you very frankly that the new police board coming into office, Mr. Reeves and Mr. Johnson will have their full results—I have no hesitancy in saying that.

Q. This election was on the 2d of November and since that time you have made no complaint either to the police board or asked for a warrant for this sergeant's arrest, or for anybody's arrest?—A. I might say further to you——

Q. Let me ask you—— A. No, sir; I will not by any means, because that sergeant himself made an excuse to me in police court—he apologized and in open court asked me to let him pay the doctor bills.

Q. You were asked a question and I ask for an answer.—A. As a minister of the gospel, I have a right to answer the question, and I say we take a smite on one cheek and turn the other. It is not my place to be coercing a police officer or anybody else.

Q. I want to ask you again, have you asked for a warrant for the arrest of this officer that assaulted you?—A. As a minister of the gospel I have no right to ask for a warrant, sir.

Q. May I ask in the future do you propose as a minister of the gospel—— A. As a minister of the gospel I am not making charges against any one. What others do for me is not against me.

Q. Let us be clear about this, doctor.—A. All right, sir.

Q. The congressional committee is going to examine this record.—A. I understand, sir.

Q. And I ask you again, as a man and as a citizen of St. Louis, have you applied for a warrant for this officer—without explanation—I ask you for a yes or no answer?—A. No, sir; I have not.

Q. Have you preferred charges against this officer before the police board?—A. There is charges written up, sir. I have not personally, no.

Q. You have not?—A. No, sir.

Q. And this occurrence took place on the 2d day of November?—A. Yes, sir.

Q. And it is now the 24th of January?—A. Should I answer this question to you—it was a public matter; it was in the public press, but the board of police commissioners to-day have never taken any notice of that public matter in the public press in the city of St. Louis. They had as much right as I had.

Q. Now, one minute, doctor. You served as a Republican judge or clerk of election; you are familiar with the fact, are you not, that such central committeemen of both parties frequently enter the polling place?—A. I am, yes, sir; I know that very well.

Q. You have seen Republican city central committeemen enter the polling places?—A. I have; yes, sir.

Q. And you have seen Democratic city central committeemen enter into the polling places?—A. I have; yes, sir.

Q. You were at this polling place at 6 o'clock in the morning?—A. Soon after 6.

Q. At 9 o'clock?—A. Yes, sir.

Q. And then what time?—A. About 11 or half past 11.

Q. And then at what other time?—A. After lunch.

Q. About what time after lunch?—A. It was first about 2 and then I was there about a quarter to 3.

Q. And then this occurrence took place?—A. Yes, sir.

Q. So you were in and about that polling place during the entire day?—A. No, sir; that isn't the entire day. There is quite a number of hours after that.

Q. You were there at the hours you have given?—A. Yes, sir.

Q. Which is practically all day long?

Mr. Feigenbaum. The witness has already answered the question.

Mr. Hawes. How far were you from the window at the time you could see through the window—the doors were closed?

A. About 3 feet, I guess it is; perhaps less—the width of this table.

Q. Were you in line?—A. Right at the side of the line.

Q. You was not in the line?—A. No, sir; not at that time.

Q. Then you were within 100 feet of the polling place and not in line?—A. I was not in line; no, sir.

Q. Were you walking up and down the line?—A. No, sir; I was not. I was about my own business, standing—just coming from the post office, and was going to get the sergeant the one time, and the other times I was over at the "Y"—went across there and was talking to the folks at the Y. M. C. A.

Q. Well, you have testified that on these various occasions you saw arguments in the polling place?—A. Yes, sir; it was so perceptible.

Q. Now, where were you when you saw these arguments?—A. I was on what would be called the north side of the street.

Q. You were close to the polling place, were you not?—A. I was close to the polling place.

Q. Yes.—A. Oh, I don't know what that will be; I suppose you could call that perhaps 35 or 40 feet just there—across the street.

Q. Thirty-five or forty feet?—A. Right across the street, taking the sidewalk and all in.

Q. Then you were not in line when you witnessed this?—A. No, sir; I was not.

Q. Did you talk to the people that were in line?—A. No, sir; I did not.

Q. Never spoke to anybody out there?—A. Not a single soul. I have more sense, and I know what the laws of Missouri are.

Q. You were not standing around the polls the entire day talking to different people?—A. No, sir; I was not. I talked to Capt. Johnson and shook hands with him.

Q. I am not talking about Capt. Johnson. I am talking about the people at the polling places.—A. Well, he was one of the people there.

Q. Well——A. At that time, wasn't he? If he was there he would naturally be one of the people.

Q. Well, was Capt. Johnson at the polling place?—A. He was that one time.

Q. One time? Yes.

Q. And the other time?—A. No.

Q. You never spoke to anybody?—A. Not a living soul, except the two men that came up and spoke to me.

Q. You never spoke to anybody in or about the polling place in your four or five visits to the polling place, except when you returned with the officer. Is that correct?—A. No, sir; it is not correct. At the polling place I talked—I crossed the street and talked to Mrs. Blessing on one occasion, who complained to me very bitterly of the treatment she had received from the officer and what I had seen with my own eyes, how she had been treated, and she asked me to find out, if I could, who that officer was—what his name was—and it happened to be the same Sergt. Reeves.

Q. Now, with the exception of your conversation with Mrs. Blessing, how many people did you talk to in the line of men at the polling place on the four or five different visits you made there?—A. Positively no one in line.

Q. No one?—A. No, sir.

Q. Doctor, you say that the reason you have not preferred charges is because you are a minister of the gospel. Then you say that when the new police board comes in that Capt. Johnson and Reeves and others are going to get what is coming to them?—A. They certainly are going to; yes, sir; not because it is due society, not because of what they did to me, but there is a certain amount due society.

Q. What do you mean by that?—A. I mean by that, sir, when a man is brutally assaulted, when men are put into that position and assaulted, society should be protected, and I believe that the new police board will protect society to that extent by drunken police officers.

Q. I entirely agree with you, Doctor, but I can't understand why as a good citizen—and you take pride in that citizenship in the United States and good citizenship—you should permit the month of November, the month of December, and during the month of January to pass without bringing the conduct of this police officer before the proper officials of the law in this city. It was your duty as a citizen to have done that. Why didn't you do this?

Mr. FEIGENBAUM. Just a minute. I object to that question in that form, because the question is a statement rather than a question.

A. I will answer the question as I answered before, gentlemen. The matter was a matter of public press account. There was practically no reason, none whatever, for this representative to make a slight charge. It was there, a matter in the press of this city, in every press of the city; even election night it was a matter of a special edition that was gotten out by the Globe-Democrat, and it was there in the press account. Consequently, when it was made a public matter I positively believe if our representatives of the police board were men doing their duty they themselves would have taken the matter up without the slightest question from me.

Q. From me. Were charges preferred against you, Doctor?—A. Were charges preferred against me?

Q. In the police station?—A. Not that I know to this day. I was supposed to have had charges—they went to the station house and the question was asked, "What are you going to put against him?" and these two men with their badges on said, "Intimidating voters." John said, "Intimidating nothing; to hell with such stuff. Is that all you got on him?" He says, "That man wouldn't intimidate anybody." Then they did put a charge, I understand, of disturbance of the peace, but I have heard nothing of it and don't know anything about it from that day to this.

Q. And you have placed no countercharges since that time?—A. No sir; I have not.

Redirect examination by Mr. FEIGENBAUM:

Q. Doctor, how long have you known Mr. Bogy, if you know him to-day?—A. Mr. Bogy?

Q. Yes.—A. Well, Mr. Bogy personally I have known very little of—I have known a great deal through history and his ancestors and so on, but I know very little of him individually. Just around since—just previous to election and just around election day.

Q. Were you a personal friend of his on election day?—A. No, sir; I was not.

Q. Are you intimate with him to-day?—A. No, sir.

Q. Do you know Maj. Hawes personally very well?—A. I do—yes, sir; I know him—I won't say personally.

Q. Well, do you bear anything particular against the major?—A. Not a particle.

Q. You are not here for that purpose?—A. Not a particle.

Mr. FEIGENBAUM. That is all.

Mr. BARRETT. That is all.

WILLIAM J. BLESSE, of lawful age, being produced, sworn, and examined on the part of the contestant, deposeth and saith:

Direct examination by Mr. FEIGENBAUM:

Q. Please state your name.—A. William J. Blesse.

Q. Where do you reside?—A. 3635a Page, St. Louis, Mo.

Q. You are a justice of the peace in the city of St. Louis?—A. I am.

Q. For what district?—A. The fifth district, division No. 1.

Q. You are admitted to the practice?—A. I have been.

Q. St. Louis bar?—A. I am.

Q. Judge, in what congressional district do you reside?—A. Eleventh.

Q. And in what city ward?—A. Twentieth ward, fifth precinct.

Q. Judge, on November 2, the last national and general election, did you at any time during the day visit any of the polling places in the twentieth ward in the eleventh congressional district?—A. I was in and about seven different polling places that day, I guess.

Q. And did you notice any disorders or irregularities taking place in any of these precincts or polling places?—A. The first precinct only.

Q. And what did you notice in the first precinct particularly?—A. Well, it was about 9.30 in the morning when I went there for the first time and there was a line stretching along Morgan Street toward Grand, I should judge about 150 or 200 people, and I walked up to the polling place to see the precinct man there, and the sergeant that was in charge there, the moment I walked toward the door, walked over to me and told me to get out of there, and I told him I just wanted to talk to the precinct man. I didn't quite finish the sentence to him—I was going to call the precinct man—when he told me I would have to get away from there or he would have to lock me up, and so I walked across the street to my machine, and after—he went inside the polling place and I went back over to where the line was and talked to some of the men I knew in the line just a few minutes—just asked them how long they had been in line, and went back over to the machine, and I stood there for about 30 minutes, and during the whole time I stood there I noticed there were 5 people went into the polling place. I was there about 30 minutes and about 5 came out and I was anxious to see the precinct man, and I went over to the sidewalk once after that, and while I was standing there the Democratic committeeman, Gallagher, I think his name is, and three other men that were with him walked in the polling place. The sergeant at that time was about 20 feet toward Grand Avenue up the street. I then went back to my machine and left there, and I didn't go back there until about 4 o'clock in the afternoon—4.30 maybe. When I went back then I should judge there were 250 people in line any way, and the line stretched to within a few feet of Grand Avenue, and the line wasn't moving at all, and I stood around there for about half an hour, I guess, and all the time I stood there nobody went in the polling place at all. I got the precinct man to call the board of election commissioners, and I left again at the end of half an hour. Then I went back the third time about 1 o'clock in the morning. I went to several of the precincts to get the returns upon the presidential electors and on the United States Senator, I think that was all, and when I got to the first precinct and rapped on the door there were about seven or eight men with their hats and coats on standing inside of the door talking together. I also saw about five or six men standing around the tables talking. I recognized two Republican judges and the clerk and the precinct man there, and I was invited to come in by the judge and started to step in, and somebody protested on me coming in, and so these men that were standing at the door inside the polling place—seven or eight of them—said, "No; you can't come in." "Well," I says, "send the precinct man out," and he came out and gave me the data I wanted and I left.

Q. These men you referred to as seven or eight men near the door, were they election judges or election clerks?—A. Well, I didn't know the election—the Democratic officials in that polling place, but there were—besides the Republican judges and clerks, there were two other men I didn't know, that stood over near the table besides these men I referred to that stood at the door—near the door.

Q. About how many men altogether were there in the place?—A. Well, I saw the two Republican judges and the clerks and these three—and I saw the precinct man who was in there as a challenger, I believe, or watcher, and then I saw two other men standing near the table up near where these men were standing, and then there were from six to eight men at the door—I ain't clear just how many there were—they were all standing together inside the place with their hats and coats on—six to eight.

Q. Did you recognize any of them as Democratic workers?—A. No; I didn't know any of them. I took rather a good look at them because I was surprised they wouldn't let me in there and I thought if I recognized any of them or they recognized me, they would let me in, but they were strangers—I didn't know them.

Q. About how many people were there in there, approximately, altogether?—A. About 12.

Q. About 12?—A. 12 to 14 people, if you count these 6 or 8 near the door.

Q. And that crowd of men, you say they were near the door—six or eight of them had their hats and coats on?—A. Yes, sir.

Q. Were the ballots laying out on the table at that time that you could see?—A. I don't remember. I have no recollection of seeing the ballots, but nobody seemed to be working when I was in there. They were all crowded, standing around the table and a crowd standing at the door.

Q. Now, during these several times you say you stopped by this first precinct, did you notice anything with reference to any voters being driven up in machines?—A. Yes. While I stood there once—well, no, that was the time I referred to when Gallagher came. He stopped there with a machine and there were three men with him, and they got out of the car and went in the polling place.

Q. Did any of these men vote, do you know?—A. I couldn't see from where I stood.

Q. You say over a period of half an hour about five men went in to vote and five came out?—A. Yes.

Q. Have you ever served as a judge of election?—A. No; as a watcher or challenger.

Q. Do you know what time an average voter takes to cast a vote?—A. Oh, I should say two minutes.

Q. How many approximately can vote in 30 minutes?—A. I should say 20 or 25.

Q. About 20 or 25. Now, this man you name as Gallagher was in there—while he was there were there any arguments taking place?—A. I was on the outside and they were on the inside. I wasn't in a position to see if there was.

Q. You didn't notice any gestures?—A. I couldn't see him from where I stood. The line of people were all around that window there—that is, on the outside, and I was on the same level as they were, and I couldn't look through them or over their heads. I couldn't see the polling place on account of the people being in my way.

Q. Did you see any person pulled out of line and allowed to go ahead of other voters?—A. No, sir; no one voted except these five I have spoken about.

Q. How long were you there the second time?—A. Half an hour. The line didn't move. The same man was at the door when I left as was there when I came.

Q. Is that first precinct of the twentieth ward known as a Republican precinct?—A. Yes; it is a colored precinct, and it is the heaviest Republican precinct in the twentieth ward.

Q. Judge, I don't know whether you know anything about this or not, but do you know about the removal of some of the polling booths in that precinct?—A. No.

Mr. Feigenbaum. That is all.

Cross-examination by Mr. Barrett:

Q. Judge, I understood you to say that you visited seven polling places in the twentieth ward on election day?—A. Yes, sir.

Q. And the only one you could find anything to criticize in was precinct 1?—A. Precinct 1; yes. I just stopped a few minutes at each one of these other places.

Q. You live in the fifth precinct?—A. Twentieth ward.

Q. And you and your good wife and Judge Duffy had no trouble voting?—A. No.

Q. You didn't hear any of them complaining there, did you?—A. No; I didn't hear any complaints in the fifth precinct.

Q. What other precincts did you visit? Give us the names and locations.—A. Well, I visited the precinct at Cottage Avenue and Spring.

Q. What precinct is that?—A. I don't know the number of that precinct, offhand.

Q. All right. Cottage and Spring. What is the next?—A. Cottage and Spring—I visited the seventh precinct and my own precinct, the fifth.

Q. Where is the seventh precinct, by the way, Judge?—A. The seventh is underneath ours—1805 North Grand Avenue.

Q. The fifth is located where?—A. That is located on Easton and Spring. And I was also at a polling place on St. Louis Avenue. I was at two of them up in the north end of the ward. I was up there in a machine for a few minutes.

Q. You went around in a machine yourself?—A. Yes.

Q. Who accompanied you?—A. Mr. Moon, the committeeman of the ward was with me part of the time, and part of the time I was by myself—that is, I believe Edgar Moon, the committeeman's brother was with me on these other times.

Q. Was the boss with you?—A. No; I never traveled with my wife that day at all.

Q. Now, you say when you came at 1 o'clock in the morning to get the returns, there were about six or eight men in there, as far as you can recollect?—A. Yes.

Q. Now, there are two Democratic judges and one Democratic clerk and there are two Republican judges and one Republican clerk in each polling place?—A. Yes.

Q. That is six?—A. Yes.

Q. And also a watcher and challenger on each side—that would be eight. So there wasn't to exceed six or eight, which would be just the official number of each party present.

Mr. Feigenbaum. I submit he didn't say six or eight—he said at the door.

A. At the door. Besides the six or eight at the door, there are two Republican judges and a clerk besides those, and I saw two other men standing with these men at the table, and I also saw the Republican watcher.

Mr. Barrett. Well, how many were there altogether?

A. That would be 3, 4, 5, 6—there would be six men that I saw standing around the table where the ballot box was, and then there were some six or eight at the door inside the polling place, besides those men.

Q. You don't know who they were?—A. I didn't know any of them; no.

Q. Now, with reference to the time you say the line didn't move, you were standing around there about half an hour. How far were you from the door of the polling place?—A. I was directly across the street from the polling place, in front of the Y. M. C. A. entrance.

Q. In the first precinct, where was the polling place located?—A. The polling place was about 200 feet east of Grand Avenue, on the south side of the street, on Franklin Avenue.

Q. On Franklin Avenue 200 feet east of Grand Avenue and on the south side of the street. And which way was the line formed?—A. The line was facing east and extended from the door——

Q. Toward Grand Avenue?—A. Toward Grand Avenue; yes, sir; along the building—the wall of the building.

Q. And during that half hour did you stand across the street?—A. I stood—I had my car parked up against that—there is a V——

Q. Yes; I understand.—A. There is a V-shaped piece of vacant property about 15 feet wide there and I was parked just north of that about—oh, I guess about 40 feet from the door of the polling place.

Q. You were then about 35 or 40 feet from the door of the polling place?—A. Yes.

Q. At that distance, could you see what they were doing inside?—A. No; I couldn't say.

Q. You couldn't tell what was going on?—A. I could see that distance.

Q. You couldn't see what was going on?—A. No.

Q. Where was the door with respect to that window; was it on the east or west side?—A. On the east side.

Q. The door was on the east side. What kind of a window?—A. It was a large plate-glass window.

Q. That was west of the door?—A. Of the door.

Q. And then the line formed from the door west?—A. Yes, sir.

Q. And they were all standing up against the window?—A. Yes.

Q. And anybody that wanted to look through that window would have their view obscured by persons standing in line?—A. Unless you go right up close to it.

Q. Unless you go right up close to it. How close would you have to go to see through the window and these people standing there?—A. I think you would have to go on the sidewalk.

Q. Could you see it then through the crowd?—A. Well, not through the crowd.

Q. You would have to go right up to where the people were?—A. I didn't make a test; I don't know. I know I looked in there once when I walked along the line.

Q. Well, during that time you were standing there there was no disturbance going on there, was there?—A. No disturbance while I was there—outside of the police sergeant was rather boisterous and he was chasing people up and down the street, that is all.

Q. Kept the people out of the so-called 100-foot limit, is that it?—A. Yes.

Q. That was the only thing that you noticed peculiar about it. You take an active part in elections, don't you?—A. I do.

Q. A very active part in assisting our friend Elmer Moon to get as many voters as he can for the Republican Party?—A. Yes, sir.

Q. And the missus, I believe, is committeewoman for the twentieth ward of the Republican Party?—A. Yes, sir.

Q. And she is active, too?—A. Yes, sir.

Q. And what you could do you did for the whole Republican ticket, didn't you?—A. Yes; that is true.

Q. And you visited as many polling places as you could find?—A. No; I didn't. I went down town during the day—I spent a number of hours down town. I just made a hurried trip to the polling places that hadn't been covered for some hours before in the morning and in the afternoon when I came back.

Q. Well, during your visits, what you saw going around, the only thing that you saw to criticize was that which you have just detailed in the first precinct of the twentieth ward?—A. That is a fact; yes.

Q. Did you visit any other wards in the district that day, Judge?—A. No; I did not.

Q. Now, Judge, when you visited the polling place at 1 o'clock in the morning the election was over then at that hour?—A. It was; at 7 o'clock.

Q. And they had counted the vote and you had obtained the result, I believe?—A. No; I didn't obtain the results.

Q. I thought you said the precinct man came out and gave you the vote?—A. No; he gave me the information that I wanted, and that was that they were nowhere finished counting in there yet.

Q. Oh; they were then counting?—A. Yes.

Q. You didn't see any disturbance around there then, did you?—A. No; just what I saw—that is all I saw.

Mr. Barrett. That is all.

Redirect examination by Mr. Feigenbaum:

Q. Judge, you said, of course, the thing that would prevent one from seeing through that window to see what was going on were these people lined up?—A. Yes, sir.

Q. Now, that wouldn't be true if a man was higher up?—A. No; I was lower than they were; I was lower than the curb line. I was in the street.

Q. And the Y. M. C. A. is directly across from the polling place?—A. Yes, sir.

Q. The steps, of course, are higher up?—A. Yes.

Q. A man could see, of course, by standing on those steps?—A. I don't know; I didn't test it out to see.

Mr. Feigenbaum. That is all.

Mr. Barrett. That is all.

CELESTE T. BLESSE, of lawful age, being produced, sworn, and examined, on the part of the contestant, deposeth and saith:

Direct examination by Mr. Feigenbaum:

Q. Will you please state your name?—A. Celeste T. Blesse.

Q. Where do you reside, Mrs. Blesse?—A. 3635a Page.

Q. That is in what ward?—A. Fifth precinct of the twentieth ward.

Q. And which congressional district of St. Louis?—A. The eleventh.

Q. You are engaged in the practice, I believe?—A. Yes.

Q. Now, Mrs. Blesse, on the morning of November 2, 1920, the last general election, were you about the various precincts of the twentieth ward?—A. I was.

Q. And will you tell us of anything that you noted regarding irregularities at the precincts that you visited?

Mr. BARRETT. I suggest that isn't the proper way to conduct an investigation. Mrs. Blesse is a lawyer and a very intelligent woman, well able to answer your questions.

Mr. FEIGENBAUM. I am not trying to lead the witness.

Mr. BARRETT. I object to that question as calling for a conclusion and assuming that there were.

Mr. FEIGENBAUM. Withdraw the question.

Q. Will you outline in a general way, Mrs. Blesse, what the general conduct of the election was in these several precincts that you visited?—A. Well, I saw nothing irregular, with the exception of in the first precinct of the twentieth ward. I visited the first precinct about 10 o'clock in the morning, and when I arrived there I saw a long line of Negro voters—there were a few white people sprinkled in that line, but practically all Negroes. They were standing—the polling place is on Enright, which is east of Grand. I think it is in the second store there, and the line extended from that door of the polling place to the corner, to the mail box, and that was the only precinct where there was a line-up that I had visited that far. I was in a machine and I didn't stop—I passed on and I went down to thirty hundred Franklin, where I was to get a Mrs. Dickson, a colored woman, who, by the way, is the colored woman precinct chairman of that precinct and who had been ill, and she had told me if I would come and get her that she would be able to vote. She was very feeble, and I got her, and then I brought her back about three-quarters of an hour later, and the line was still the same length, and I took Mrs. Dickson up to within—oh, a few feet—10 or 12 feet, I guess, of the door, when Mr. Dickson came and got her, and she was in such a condition that the people in the line gave way to let her go into the polling place. I stood on the curb waiting for Mrs. Dickson to come out, that I might take her back to her home, and there was a police sergeant walking up and down and he came over to me and he said, "What are you doing here?" I said, "I am waiting for an invalid, who is voting." And he stopped a minute and he said, "Well, you had better move on," and I said, "I brought a colored woman up here and I am waiting to take her back." I said, "As soon as she comes out I will go on." He didn't know me and I didn't make myself known. He said, "You see that sign down there that says b-o-o-k-s?" He says, "You march down there," and I then saw that he was apparently under the influence of liquor, and I said, "I will step across the street to my machine," and I walked across quietly to the machine. When the woman came out a man there saw she was in a feeble condition and he volunteered to bring her across to me. That same sergeant approached a colored woman and made her go down to b-o-o-k-s. I then took Mrs. Dickson home and proceeded through the ward to the various precincts. I saw nothing irregular in any of the others. They were voting rapidly—in fact, it wasn't necessary to go after anybody and it wasn't necessary to do very much work. They were going in and voting and leaving. There was no lineup any place that I saw.

Q. Now, Mrs. Blesse, that first precinct of the twentieth ward, is that known as a Republican precinct?—A. Oh, that is a Republican precinct.

Q. Is that the largest, or is it not, Republican precinct in the district?—A. It is practically the only Republican precinct in our ward; it consists of negroes largely.

Q. Now, Mrs. Blesse, tell us whether or not you saw any machine draw up and people get out and allowed to enter in front of the line of voters?—A. No; I didn't see that.

Q. Do you know the name of that police sergeant?—A. I was told that his name was Reeves.

Q. Sergt. Reeves?—A. Sergt. Reeves.

Mr. FEIGENBAUM. That is all.

Cross-examination by Mr. BARRETT:

Q. Mrs. Blesse, you are the committeewoman for the Republican Party for the twentieth ward, I believe?—A. Yes.

Q. And your husband, William J. Blesse, is a justice of the peace?—A. Yes.

Q. And you both take an active interest in helping Elmer Moon out all you can for the benefit of the Republican Party in that ward?—A. Yes. I am chairman for the city.

Q. And you attend meetings of the organization?—A. Yes.

Q. And you have had considerable experience in politics, haven't you?—A. Well, it is true.

Q. You took an active part before the nineteenth amendment was adopted, I believe, before the legislature passed the enabling act to vote for President and Vice President—you took an active part?—A. Yes.

Q. And us antileaguers met right often, you recollect, too—anti-League of Nations?—A. Oh, yes, yes.

Q. And you met a great many people during that campaign?—A. Yes.

Q. And you went about the ward at different places during the day of the election—that was November 2, 1920?—A. I was all through the ward.

Q. How many precincts did you visit?—A. Seventeen.

Q. You visited 17, all told. How many are there in the ward?—A. Seventeen.

Q. And the only one of the 17 that you found anything to complain about was the first?—A. The first.

Q. All the others, as far as you could see, were orderly and quietly conducted—nothing to complain about?—A. When I was there.

Q. Well, you didn't hear any complaints about any of them, did you, during election day at the time you went around—you heard no complaints?—A. No; not on election day. I heard no complaint at any of them.

Q. And the judge never said anything to you about any other precinct he visited that day?—A. I don't recall.

Q. If he did, you would recall. You didn't hear Elmer Moon complain, did you?—A. Well, I didn't discuss the subject with Mr. Moon.

Q. Now, you spoke of Mrs. Dickson, the sick lady?—A. Yes; a negro woman.

Q. A negro woman that you brought from her house to the polling place in the machine. What time of the day was that?—A. Well, I couldn't tell you exactly, but it must have been about 11 o'clock in the morning.

Q. Eleven o'clock in the morning?—A. Yes.

Q. What was the first time that you arrived at the first precinct of the twentieth ward?—A. Well, about 10 o'clock, and then I went after Mrs. Dickson.

Q. When you arrived there at 10 o'clock in the morning, how many people were in line?—A. I couldn't tell you how many, but the line extended from the polling place west to Grand Avenue to the mail box, which is on the extreme corner.

Q. And how far east is the polling place from Grand Avenue?—A. Well, there is—it is the width of the drug store—I am not a very good judge of feet—there is the drug store and another store. Perhaps a hundred feet—50 feet to each store.

Q. And the men were standing close to one another; single file?—A. Yes; very close together.

Q. How long did you stay there on that occasion—the occasion of your first visit before you went to Mrs. Dickson?—A. I stopped just a second and I believe at that time I spoke to Mr. Feigenbaum, or some one, and then I went on after Mrs. Dickson.

Q. Now, then, when Mrs. Dickson came back, did she go on the end of the line?—A. No.

Q. And take her turn?—A. No; Mrs. Dickson was physically unable. She had to be assisted and Mr. Dickson took her in ahead.

Q. In other words, she went in ahead, out of her turn?—A. Yes.

Q. And she voted?—A. She voted.

Q. And you waited outside there for her and took her back home?—A. I did.

Q. And she was a colored lady?—A. Yes.

Q. Was the sergeant there when she voted, Mrs. Blesse?—A. The sergeant was not there when she entered the polling place.

Q. But they let her go in out of her turn, and she was the colored woman captain in that precinct?—A. A man standing in line—the first man gave his place to her.

Q. Well, I say they all knew she was a colored woman—they could see her color?—A. Well, they were all colored that were in the line.

Q. And they knew she was a Republican?—A. Yes—yes, I believe they did.

Q. And that she was a—well, they were personally acquainted with her?—A. I suppose so.

Q. And the judges and clerks were?—A. I don't know whether the judges and clerks were or not.

Q. They knew also that she was a precinct captain?—A. Well, I don't know whether they were or not.

Q. Well, she was permitted to go in and come out?—A. Yes.

Q. Now, Mrs. Blesse, what kind of an establishment is conducted at the place where the voting was held on election day?—A. I think that was a tailor shop.

Q. And what is west of the tailor shop?—A. I think it is a drug store.

Q. The drug store is on the corner?—A. Yes.

Q. Is there anything between the drug store and the tailor shop?—A. It seems to me there is something there.

Q. There are two stores and then a tailor shop?—A. I think so.

Q. It is about a hundred or a hundred and fifty feet east of Grand Avenue. Now, the door is on the east side of the tailor shop where the voting was held, and there is a window on the west side?—A. Yes.

Q. And the people standing in line would be facing east on the line extending back to Grand Avenue?—A. Yes.

Q. And they would naturally obscure the view of that window, wouldn't they?—A. Yes; you couldn't see in there.

Q. You couldn't see in the window if you are standing at the curb with that line—you couldn't see through that window with the people there unless you went right up to the people?—A. Well, I didn't make any effort——

Q. You would have to look over their shoulders—you would have to walk right up close to the line before you could see in the window?—A. I suppose so; I didn't make any attempt.

Q. While you were standing on the sidewalk you couldn't see what was going on on the inside?—A. No; I saw nothing on the inside.

Q. There was nothing on the inside, as far as you could see, that attracted your attention, was there?—A. Well, I didn't go inside, and I didn't look inside.

Q. Now, where was your machine standing, on the south or north side?—A. It was standing over in front of the "Y"—Y. M. C. A.

Q. That was on the north side. Well, when you got in your machine, Mrs. Blesse, while waiting for Mrs. Dickson, could you see from that distance what was going on in the polling place?—A. Mr. Barrett, I didn't see anything going on in the polling place. I didn't go in because of the attitude of this police officer toward me. I started in.

Q. I was just asking if you could see from your machine across the street?—A. No; I couldn't see any from the street. It would be too dark. I couldn't see even had the window been clear—I couldn't see in.

Q. You say it would be too dark?—A. Yes. I was in the sunlight and the room would have been in darkness. I don't think I could have seen.

Q. You could see, though, if you were standing on the sidewalk at the curb?—A. I guess you could on the sidewalk.

Q. Well, did you notice anything?—A. I didn't make any attempt to notice anything.

Q. Well, I say, was there anything that attracted your attention?

Mr. Feigenbaum. I object to that; the witness said she didn't try to look.

Mr. Barrett. I am not asking—I know she wasn't trying to spy.

A. Mr. Barrett——

Q. I just wanted to get Mrs. Blesse's viewpoint, that is all.—A. I didn't approach the polls from the west. My machine drove up in front of the door of the "Y" and I came up from the east to the polling place. I stood east of the door, you see, so I wasn't up at the window. I stood east of the door and it was while I stood there that the police officer came to me.

Q. He told you to go back to the books?—A. Yes; and for that reason I made no attempt to go in that polling place.

Q. I see. Now, then, that was the second occasion that you were there?—A. Yes.

Q. Now, on the first occasion that you were there, were you standing on the sidewalk?—A. On the first occasion?

Q. On the first occasion before you went for Mrs. Dickson?—A. Was I standing on the sidewalk?

Q. Yes.—A. No; I didn't get out of the machine.

Q. Just drove up?—A. I stopped a moment and spoke to some one, but I didn't get out of the machine. I went back later about dusk—no; I went back later, about 3 o'clock, and just rode up; saw the long line and at dusk I went by and I saw some of the same faces in that line that were in there at about 1 o'clock.

Q. Now, did you bring any other persons to the polls besides this Mrs. Dickson?—A. Not to the first precinct.

Q. Now, then, did you have any members of your organization working at the polls in that precinct on that day?—A. I started to have a woman—I started out and I assigned a colored woman who would take Mrs. Dickson's place, and when the sergeant exhibited this attitude that he did I told the woman to go home.

Q. Well, before the election, during the campaign, and on the day of election you made every possible effort to get out the vote?—A. Yes; of course.

Q. It was a presidential election, wasn't it?—A. Yes.

Q. Great interest was manifested in the election?—A. Yes.

Q. President-elect Harding was here and made a speech and Gov. Cox was here and made a speech?—A. Yes.

Q. And there were a number of other prominent men here in both parties made speeches, and both parties were making an effort to poll a big vote?—A. Yes.

Q. And there was a big vote polled?—A. Yes.

Q. And there was a long ballot, is that right?—A. Yes.

Q. And there was considerable scratching going on, wasn't there?—A. Yes.

Q. Now, for instance, there were quite a few Democrats who didn't want any kind of a League of Nations, and they were doing some scratching freely, weren't they?—A. Yes.

Q. And it took them quite a little while to vote, didn't it?—A. Yes.

Q. And in this precinct you spoke of, the first precinct, there are a good many of them illiterate voters and the ballot had to be prepared by the judges and clerks?—A. Not through our ward.

Q. I mean particularly in this——A. No.

Q. In your precinct you have a pretty intelligent class of people, haven't you?—A. We have in the fifth and in the seventeenth; that is about all.

Q. Were there any prominent Republicans that you know of outside of the city of St. Louis—Republicans of prominence outside of the city of St. Louis—brought into that district, the eleventh district, to make any speeches that you know of?—A. Not that I—I don't know.

Q. You don't recall any, do you?—A. No; I didn't attend every meeting of the evening rallies, and the meetings I attended I really made no attempt——

Q. Without your arranging for it, you don't recall any prominent Republican speakers—I mean outside of the city of St. Louis—were brought especially in that district to speak?—A. No; I don't.

Q. But there were some prominent Republicans who did speak, however, in the tenth and twelfth congressional districts?—A. Well, I don't know that.

Q. Well, President Harding spoke in the twelfth, didn't he?—A. President Harding spoke at the Coliseum.

Q. Yes. That is in the twelfth congressional district.

Mr. Feigenbaum. I object to that conclusion. It is well known that President Harding came here and spoke at the Coliseum for the entire city.

Mr. Barrett. You just leave Mrs. Blesse and I alone; she and I are getting along splendidly.

Mr. Feigenbaum. You are doing the testifying.

Mr. Barrett. Gov. Hyde made several speeches during the campaign in the city of St. Louis?—A. Yes; all through the city.

Q. You don't recall of his making a speech in the eleventh district, do you?—A. Well, I met Gov. Hyde at a number of ward meetings.

Q. Do you remember of a special effort being made, either by him or anybody else, in the eleventh district for Congress?—A. I don't remember that the governor at any meeting spoke in behalf of any candidate, excepting that he asked that they elect Congress to support the President. In fact, that was done all through the city by all the candidates.

Q. Well, but right offhand, you can't recall any prominent Republican speakers that were brought from the outside into the eleventh district to make any effort to carry that district for Mr. Bogy, can you?—A. No; I can't.

Q. None of your neighbors that lived around you made any complaint about having any difficulty in voting, did they?—A. No; not in the fifth precinct.

Q. Mrs. Duffy, for instance?—A. That is the fifth precinct, and all our neighbors are Democrats.

Mr. Feigenbaum. They had no trouble in voting, did they?

A. I didn't discuss politics with them at all.

Q. Mrs. Blesse, I think you said the first precinct of the twentieth ward is the only large Republican precinct in that ward?—A. Yes.

Q. The others are mostly Democratic precincts?—A. Yes.

Q. And while the voting was large throughout the ward, there was no trouble—no delay in voting in any other precinct except the first?—A. Oh, no; no delay in any precinct except the first.

Q. Except in the first precinct?—A. The first precinct.

Q. When President-elect Harding came here he spoke at the Coliseum, and people from the entire city visited the Coliseum on that occasion?—A. Yes.

Q. Did the congressional district—he didn't come here for any particular district?—A. Oh, no.

Q. And he urged, did he not, in that speech at the Coliseum that the people of St. Louis return Republican Congressmen?—A. He did.

Q. He did on that occasion; and that was the attitude taken by all the prominent Republican speakers when they came here?—A. Oh, yes.

Q. To elect a Republican Congress with the President?—A. Yes.

Q. So as to give him a free hand?—A. Yes.

Mr. Feigenbaum. That is all.

Recross-examination by Mr. Barrett:

Q. You don't recall any prominent Republicans of that kind making a speech in the eleventh district, do you, Mrs. Blesse? Can you name any single——
A. No; I don't recall any special meeting held for the purpose of electing a candidate for Congress in the eleventh district; no special meeting that I recall.

Mr. Feigenbaum. Mrs. Blesse, when Gov. Cox came here he also spoke in the twelfth district, because the Coliseum happened to be in the twelfth district?

A. Yes, sir.

Mr. Barrett. Mrs. Blesse, didn't you read in the newspapers of Bourke Cockran coming here and making a speech for Mr. Hawes?

A. Yes, sir.

Q. Didn't you read about Floyd Jacobs coming here from Kansas City and making a speech for Mr. Hawes?—A. Yes.

Q. And Champ Clark?—A. Mr. Hawes had his headquarters in the twentieth ward.

Q. I say, did you hear about Champ Clark?—A. I don't recall that; I don't recall Bourke Cockran.

Q. Do you remember about Senator Walsh, of Massachusetts?—A. I recall reading that; yes.

Q. Do you remember Dr. R. Emmet Kane, who was supporting Harding, coming out in an article in favor of Mr. Hawes's candidacy?—A. No.

Q. Do you know Dr. R. Emmet Kane?—A. I know Dr. Emmet Kane.

Q. You know he was supporting Harding, don't you?—A. Oh, yes; I do. He was against the League of Nations.

Q. Now, don't you recall an article of his in which he called upon those that opposed the league in that district to support Hawes for Congress?—A. No; I didn't see that.

Q. Well, didn't he call upon the Democratic——A. I didn't see that.

Q. Don't you remember his calling upon the Friends of Irish Freedom to stand for Hawes on that proposition?—A. I attended the meeting of the Friends of Irish Freedom at the Odeon and there was no Hawes sentiment.

Q. That is, the general meeting you speak of?—A. Yes.

Q. I am speaking about the meeting of Dr. Emmet Kane himself—don't you recall his reading a letter or coming out in a statement?—A. No; I don't, Mr. Barrett.

Q. Well, do you recall a letter from me?—A. No; I can't say that I do. I don't think I paid a great deal of attention.

Q. And Senator Hitchcock, did you ever hear him make a speech in Mr. Hawes's behalf?—A. Yes; I recall Senator Hitchcock being here.

Mr. Barrett. That is all.

Mr. Feigenbaum. Mrs. Blesse, that meeting at the Odeon of the Friends of Irish Freedom, didn't they indorse Mr. Bogy at that meeting?

A. I don't recall, but I think they did.

Q. There is a Hawes headquarters in the twentieth ward?—A. There was.

Q. There was rather, I should say?—A. Yes.

Q. That is where the Hawes headquarters was located?—A. Yes, sir.

Q. Can you recall at this time where it was located?—A. The northwest corner of Grand and Easton.

Q. The northwest corner of Grand and Easton. You had seen it there?—A. Oh, yes.

Q. What sort of a sign was on that window, or whatever it was on there—was it, "Hawes for Congress"?—A. I don't know. I guess, "Hawes for Congress." I don't recall the wording of the sign.

Q. Do you recall the name of William L. Igoe, chairman?—A. Yes; president of the club.

Q. Can you tell us about how long that headquarters was open, or had the sign there—approximately how long?—A. Well, for some time: I couldn't tell you how long.

Q. For some time—by that you mean approximately——A. During the campaign season.

Q. During the campaign season, that was all?—A. Yes, sir.

Mr. Feigenbaum. That is all.

Mr. Barrett. That is all.

THEODORE UMBRIGHT, of lawful age, being produced, sworn, and examined, on the part of the contestant, deposeth and saith:

Direct examination by Mr. Feigenbaum:

Q. Will you please state your name?—A. Theodore Umbright.

Q. Where do you reside, Mr. Umbright?—A. 1433 Dodier.

Q. What is your occupation?—A. Deputy clerk of the Court of Criminal Correction, clerk's office.

Q. Now, what ward do you reside in?—A. The third.

Q. What congressional district is that in?—A. The eleventh.

Q. On November 2, 1920, the last general election, did you spend any time going through the various polling places of the third ward?—A. Yes, sir; I was interested in the election.

Q. You were interested in the election in what way?—A. Well, I had a ticket out of my own; I was candidate for committeeman at the primary and I was out working for the general ticket.

Q. You were out working for the general ticket. Now, can you tell us whether the election was generally quiet in your ward, or, rather in the third ward?—A. Well, how do you mean; any disturbances?

Q. Yes; were there any disturbances?—A. No; no, I saw no disturbances.

Q. Did you notice anything with reference to any electioneering?—A. Yes.

Q. Will you tell us what, if anything, you noticed in that ward?—A. Well, in pretty near all the precincts I saw a lot of the women and the men that were busy working for their different candidates and especially interested in the Hawes-Brogan affair of it. They were right at the polling-place door and asking every voter—women and men that would go in to vote for Hawes and Brogan—didn't pay any attention to the rest of the ticket, just on the Hawes and Brogan.

Q. How near to the door?—A. Just in front of the door.

Q. You say that was true in all of the precincts of the third ward?—A. Not all of them; at some they kept their distance, but at a few they were right at the door.

Q. Well, in how many?—A. Well, in my precinct—the tenth—I came over there with my daughters and some of the ladies in the neighborhood. I had, I guess, about 10 of them, and they stopped—the whole bunch got busy with them right away and talked for Hawes and Brogan, and I said, "They know what to vote without you telling them." I took them right in and they all voted.

Q. How many precincts are there in the third ward?—A. Fifteen.

Q. And about how many of these precincts did you notice electioneering in and how many did you notice it—that is, by electioneering I mean in front of the polling place?—A. The ones I was at the most, about five of them, I guess.

Q. Now, you say different workers were around favoring candidates. Was anybody in front of the door or any persons electioneering for Mr. Bogy in front of the door?—A. Not that I saw any; they were kept still—or kept around the corner.

Q. When you say they were kept, who do you mean kept them?—A. The police.

Q. The police officials. Were you in any of the precincts where you noticed any irregularities inside of the polling place?—A. Well, in my own, when I went in there I noticed they had the ballot box on the floor where it couldn't be seen and had the amendment box up on the table, and they were sticking the amendment ballots in there, and then half of the voters didn't notice what became of the other ballots, and when I came in I seen where the ballot box was and I objected. I told them that box belonged on the table and not on the floor, where it couldn't be seen. When I got outside I complained to some of the precinct men and they said they had told them about it, but they didn't pay any attention to it, and before I got out of there they put the ballot box up on the table and put the other one on the floor where it belonged—that was the next time.

Q. Did you go back in that precinct the same day?—A. Yes; it was where it belonged then.

Q. Was anything in particular done by any one candidate or any other officials or workers for the candidate in the way of handbills or otherwise?

Mr. BARRETT. Wait a minute. What do you mean, on the outside?

Mr. FEIGENBAUM. No; inside the polling place is what I am talking about.

A. No; I couldn't say to that.

Q. Do you know of any arrangement of any kind made outside of the polling place?

Mr. BARRETT. I object to that as wholly immaterial. A man can vote for whom he pleases.

Mr. FEIGENBAUM. Did you see any machine drive up in front of any of these polling places?

A. Yes, sir.

Q. Have any banners on?—A. Yes, sir.

Q. These banners were on them?—A. Well, there was some had Hawes and some had Brogan and some had both of them on.

Q. Did you see any of the badges or banners?—A. Not in front of the polling place. I saw them drive up and stop at the corner.

Q. The others with the Hawes and Brogan banners stopped right in front of the polling place you say?—A. They did in two places. That was going on at Fifteenth and St. Louis Avenue, No. 12, and No. 10, and where I was at the most of the time.

Q. Did the police interfere with them any?—A. No. They stopped there and stayed a while and then the machine drove up and nobody said a word to them.

Q. Did you see any other machines with other candidates' names on stop there or make an attempt to stop there?—A. I saw them stop around the corner a distance away.

Mr. FEIGENBAUM. I think that is all.

Cross-examination by Mr. BARRETT:

Q. Teddy, you visited every polling place in that precinct or ward?—A. No; not every one. I went around pretty near to all.

Q. There is 15 altogether?—A. Yes.

Q. You visited them—you didn't notice any disorders?—A. No; no fights.

Q. But you visited practically nearly every one?—A. Yes.

Q. And everywhere you found people on the outside making an effort to cast votes for Brogan and Hawes?—A. Yes, sir.

Q. A special effort was being made for those two?—A. Yes.

Q. Did you find anybody on the outside making any special effort to vote for Bogy?—A. Yes; they were at the corners, the precinct men, and so on.

Q. Well, they were pulling for the whole ticket?—A. Yes.

Q. The whole Republican ticket. But you didn't find any number of workers in any precinct especially working for Bogy, did you?—A. Well, I had a few of my men at work for Bogy.

Q. Specially?—A. Yes, sir.

Q. How many?—A. Oh, I guess about a dozen.

Q. Scattered in the different precincts?—A. Different precincts.

Q. Were they working for him especially or the whole Republican ticket?—A. They were getting all the votes they could for Bogy.

Q. Bogy alone?—A. Yes.

Q. In every one of these precincts you say you found two or three and in some instances five or six?—A. Five or six.

Q. Five or six making a special effort for Hawes and Brogan?—A. Yes.

Q. And they seemed to be particularly interested in those two candidates?—A. Yes.

Q. And you found them in every precinct that you visited?—A. Well, that is, on the upper precincts. The lower ones weren't so bad. They would just stand around passing out their ballots, and so on.

Q. Let's see, who was Brogan opposing at the general election, Joe Ebeling?—A. Yes.

Q. How many votes did Brogan run ahead of Ebeling in that ward, do you know?—A. I don't know.

Q. About?—A. I couldn't say.

Q. About 400, wasn't it?—A. In the ward?

Q. Yes.—A. No; he beat him more than that.

Q. Did he? How much?—A. I couldn't say: I never looked it up.

Q. Well, your best recollection about it?—A. Oh, he beat him several hundred.

Q. Didn't he run 1,500 ahead of him?—A. I don't know that. I heard he was beat and I didn't bother about that.

Q. Joe Brogan is very strong and has a large personal following?—A. Well, I know how they play the game.

Q. I say, he has a large personal following?—A. Yes.

Q. And he has been elected to the State senate since 1912, hasn't he?—A. Yes.

Q. And you formerly were a member of the Republican city committee?—A. Yes.

Q. There were quite a lot of candidates in the August primaries for the committee?—A. Sure; he and the Democrats went down the line for Bishop, and then they went down the line for Brogan.

Q. You Republicans have a scrap up there every once in a while for committeeman?—A. Every once in a while.

Q. They were started when George Reichman was committeeman?—A. Yes.

Q. These fights have continued ever since?—A. Ever since.

Q. And one crowd gets sore at the other and he takes it out on the other?—A. While I was in the committee they didn't.

Q. When Reichman was in the committee they did, and they are doing it now?—A. Yes.

Q. They did at the last election?—A. They did at the last election.

Q. And turned around and supported some Democrats, didn't they? They were sore?—A. [No response.]

Q. And there was a special effort made by those people on the outside to help Brogan and Hawes wasn't there?—A. I couldn't swear to that, but I know lots of them voted for him.

Q. There were a number of Republicans in that ward voted for Hawes and Brogan, weren't there?—A. Well, that is correct—I couldn't say, but I guess there was; I couldn't say there were.

Q. Well, did any of them indicate——A. I never seen their vote and I couldn't see them vote.

Q. Well, on the outside, did you find any Republicans?—A. Yes; I met a couple of them that said they voted for him.

Q. Talking for Hawes and Brogan?—A. No; they just said they voted for him.

Q. They just said they voted for him. You mean some Republicans. Do you know how many?—A. Oh, I couldn't say.

Q. Well, about.—A. I guess about half a dozen.

Q. In one precinct or several?—A. Oh, scattered around.

Q. Now you say in all of these places that you visited you found no disorders and that in one place, the tenth, the ballot box—one of them was on the floor, where you put the candidates ballots in?—A. Yes.

Q. And the amendments, there being an election held on a constitutional amendment, that was on the table?—A. Yes. The ballot box belonged on the table.

Q. Well, you didn't see anything being done wrong there did you?—A. Not while I was in there, but people in there voting didn't know whether their ballots were going in the box or not.

Q. You saw yours go in?—A. I should say so.

Q. You saw the ballots of others go in there?—A. While I was in there, because they knew me pretty well.

Q. In that place there were two Republican judges, a clerk, two Democratic judges and a clerk?—A. Supposed to be.

Q. Well, I say, they were appointed?—A. Yes.

Q. You dont' mean to say that these officials were not Republicans, do you?—A. Not according to their actions they wasn't.

Q. Well, did they do anything that was contrary to the ethics of the Republican Party?—A. Well, that is only hearsay. I heard some of them in the afternoon were going around for the Democrats more than they did for their own party.

Q. Did you see them do it?—A. No; I said that was only hearsay.

Q. Do you know anything against the conduct or character of these gentlemen?—A. No.

Q. You didn't see anything wrong—just what you got is general rumor?—A. That is all.

Q. So far as you know, the election in the third ward was conducted orderly and quietly?—A. Well, as far as trouble was concerned, I never saw any.

Q. You never saw any irregularity committed inside anywhere?—A. No, sir.

Q. Or none on the outside?—A. No, sir.

Mr. Barrett. That is all.

Mr. Feigenbaum. These men you say were around in front of the polling place asking people to vote for Hawes and Brogan, were they Democrats or Republicans?

A. Democrats.

Q. None of the Republicans were standing in front of the door asking them to vote for anybody, was there?—A. No.

Q. Did any of these men wear any badges—those that were standing in front of the polling place?—A. Yes; the women and men both had badges on.

Q. Whose badges were they?—A. Well, I guess some had Brogan and some had Hawes and some had both on.

Mr. Feigenbaum. That is all.

Mr. Barrett. That is all.

Not being able to complete the taking of the depositions, I adjourn the further taking of the same until to-morrow, then to be continued at the same place and between the same hours mentioned in the annexed notice.

Frank B. Grodzki, *Notary Public.*

My commission expires September 9, 1921.

Tuesday, January 25, 1921—9 a. m.

(On this Tuesday, January 25, 1921, at the hour of 9 o'clock a. m., the parties met, pursuant to adjournment, as before stated, and the following proceedings were had:)

Mr. Feigenbaum. I want an opportunity to photograph these ballots, and we have made every effort endeavoring to get these photographs made; we have been talking about that thing and trying to get a ruling since last Saturday.

Mr. Buder. Do you want a full board to pass on whether he is entitled to these photographs or not?

Mr. Barrett. He wants whole wards.

Mr. Feigenbaum. You know I do not, and I have told you I do not, and you have a list indicating what precincts I want.

Mr. Cummings. Then you want whole precincts.

Mr. Barrett. How many do you want anyway?

Mr. Feigenbaum. I want six precincts, the scratched ballots in those six precincts photographed.

Mr. Barrett. All of them.

Mr. Feigenbaum. We were not permitted to keep any numbers, and I can not tell you what numbers they were.

Mr. Cummings. Mr. Feigenbaum was not present when that program was made here and when the chairman asked Mr. Bogy and Mr. Bauer, his attorney, how they wanted this count taken, the board told him they would take it just either way, and they made up a program according to their statements, and that program was approved, and the stipulation was signed, and it is entirely the fault of the contestant that he has not all of the data that he wants at this late date.

Mr. Feigenbaum. In answer to that I will say that only the other day some question came up about looking at the number of ballots and Mr. Cummings and Mr. Barrett both expressly stated, and the board agreed with them, that we had no right to look at the numbers of ballots; in the absence of opportunity to look at ballots, how can we tell you which of the ballots we want?

Mr. Buder. I do not recollect the board having ruled that way.

Mr. Dempsey. I do not recollect it either.

Mr. Buder. The board said you had no right to compare a ballot to the poll book to ascertain who voted that ballot and how he voted.

Mr. Dempsey. I want to say this to the board, that we ought not to be involved from now on in any way with the questions of veracity. There are stipulations here and we are going to stand by them.

Mr. Buder. The minutes of our board say what was decided.

Mr. Dempsey. Let them fight it out and not argue questions of veracity.

Mr. Buder. I do not recollect we said they could not look at a number of a ballot, scratched or unscratched. What we did say was they should not compare a ballot with the poll book to ascertain who voted a particular ballot. That is what we said.

Mr. Feigenbaum. Of course, the records here—I looked through here to inform myself how many scratched ballots there were in any particular ward, and I only found two tables of men who paid any attention to it, and that is what you will find in looking through the sheets.

Mr. Dempsey. There was never a request made to keep a record of scratched ballots, and the question was discussed, and it was agreed there was no record kept of scratched ballots and there was never a word about a record being kept of scratched ballots until Mr. Bogy called my attention to the fact that a man was being refused out there who was not a clerk of this board, but was a watcher and was taking private memoranda himself.

Mr. Feigenbaum. How can we furnish you with a memorandum if we cannot take the numbers of ballots?

Mr. Buder. Your statement was the second last day you told him he could not take a memorandum of those ballots.

Mr. Dempsey. I didn't say that. I said there was never a question about these scratched ballots until Mr. Bogy called my attention to it, and I said that was thrashed out in the board the first day and they did not require that memorandum, and I could not give that permission.

Mr. Bogy. At the first meeting of the board, when the stipulation was presented by Mr. Arnold, I stated I knew nothing about stipulations or contests, but I said that one of my chief objects in having this recount was to have a careful count kept of the scratched ballots, so they could be compared, and where a similar handwriting on different ballots where my name was scratched and Hawes written in on a number of ballots in a certain precinct, I wanted to be able to have them photographed; but where there was a dissimilarity between where other Republicans were scratched and other Democrats written in, where Mr. Hawes's name was written in, it showed dissimilarity.

Mr. Buder. The board has not as yet denied you the right to take a photograph of ballots.

Mr. Feigenbaum. We were denied that Saturday morning.

Mr. Bogy. I would say this: Some time after the count had been going on, and after I had made a statement out loud in the room there, before all of the clerks——

Mr. Dempsey. Mr. Arnold you mean.

Mr. Bogy. You made a statement and I followed that statement; you told them they were not to keep any count of the scratched ballots, and afterwards, when I spoke to you, you said that you did remember that I had spoken about wanting a photograph of scratched ballots, and I said how in the world could we photograph them if we could not look at them and could not compare them to see whether there was any fraud or not. I followed you, after you made your little address out before the clerks and watchers, and I made the statement that one of my chief reasons for asking this recount was to take particular note of the scratched ballots, because I had supposed that that was the way, if there was any fraud committed, it was the way it was going to be done. I had mentioned it in speeches, and if I didn't get that privilege here I expected Congress would later on go through these boxes and examine the scratched ballots very carefully. I made that statement openly and it was heard by all the men.

Mr. Barrett. There was something else you said. You said you were not getting a square deal.

Mr. Dempsey. Where did you follow me in a statement?

Mr. Bogy. Right out there on the floor, in the middle of the room.

Mr. Dempsey. I absolutely deny the truth of that statement; I never made any such statement, and I never heard Mr. Bogy make such a statement; and I think you will all agree with me Mr. Bogy said the other day it was Mr. Arnold who made that statement.

Mr. Cummings. There was a stipulation signed by the contestee and his attorneys and contestant and this board conducted the recount under that stipulation.

Mr. Feigenbaum. I do not find one word in that stipulation referring to scratched ballots.

Mr. Cummings. You did not request it, and it is not in there.

Mr. Feigenbaum. Therefore, it is in point to explain—any matter not in it.

Mr. Dempsey. Gentlemen, I am getting damned tired of listening to that statement about scratched ballots, and that was gone into thoroughly by the chairman, and Mr. Bauer was here and said they didn't need it and said he didn't want it.

Mr. Feigenbaum. Where is the objection to it? I have the statement of Mr. Bogy and the statement of others that they did try to get it.

Mr. Barrett. Bogy makes one statement one day and makes another one another day.

Mr. Feigenbaum. Not in my presence, he has not changed his statement.

Mr. Buder. I do not know what this discussion is coming up for; there is nothing before the board.

Mr. Dempsey. These are the minutes of January 11 as to how to conduct the recount and the method of recounting the ballots. [Reading:]

"The method of conducting the recount of the ballots was then discussed and the plan offered by the chairman unanimously agreed to, which was to have the clerks in the office conduct the count, under the supervision of the board, by recounting the ballots and showing only the total number of votes received in the recount by the contestant and contestee and the candidates of the other parties at said election in contest, also to tabulate the ballots rejected by the judges and clerks of election and to enumerate and list disputed ballots, to wit, those where there is any doubt on the part of the counters that they have been improperly marked and those having no corresponding number on the poll books and those having duplicate or triplicate numbers, also any other disputed ballots, all of which will be passed upon by the board of election commissioners. The plan for making this recount, together with the oath of secrecy and the instructions to counters, were unanimously approved by the contestant and contestee and their respective counsel."

Mr. Feigenbaum. The only request before the board is the request we made to protograph several ballots in the six precincts, the numbers of which I have furnished contestee—the number of precincts, I said. I want to photograph all of the scratched Republican and Farmer-Labor and Socialist, but I would like to photograph them——

Mr. Cummings (interrupting). In how many precincts?

Mr. Feigenbaum. In six precincts.

Mr. Cummings. We object to the contestant attempting to change his stipulation and the method of count at this late date. We stand on the stipulation made. What is the use of making a stipulation if you are going to disregard it?

Mr. Feigenbaum. I submit there is nothing in the stipulation about photographing any ballots, and the stipulation that has been read and the conduct of the clerks in preparing the sheets as outlined has absolutely nothing whatever to do with photographing. There is not one word mentioned about photographs. Further, the board has already taken up the question of photographing certain ballots and has given us consent to photograph some ballots. They have so ruled, and we have proceeded to photograph five ballots, and these are simply along the same line.

Mr. Barrett. I beg your pardon; that was done by consent of counsel; you indicated to me the ones that you wanted, and they were exhibited out at that table.

Mr. Feigenbaum. Saturday afternoon.

Mr. Barrett. On stipulation; some disputed ballots. We said to go ahead and do it.

Mr. Cummings. We objected, because on Monday you did not state what ballots you wanted. When you did state it we said, all right; we had no objection.

Mr. Buder. We will wait until Judge Arnold arrives to pass on this question.

(Upon the arrival of Judge Glendy B. Arnold the following proceedings were had:)

Mr. Buder. The first question up is whether or not we should count for Hawes certain ballots on the strength of returns when they are not in the box. What are you going to do on that?

Mr. Cummings. First, let me state it a little bit further than that: For example, the eighteenth ward, the twelfth precinct, there were 30 ballots missing out of that box. The poll book of the eighteenth ward, that precinct, shows that the contestee, Hawes, was reported to have received 316 votes; Bogy, the contestant, 93 votes; Long, Socialist, 7 votes; Spaita, Socialist Labor, none; Allen, Farmer-Labor, none; Prohibition, none. On the recount contestee, Hawes, received 284 votes; the contestant, Bogy, 90 votes; the Socialist, Long, received 7; and the others, none. Second, the only variance in that recount as to Bogy is where he lost 3 votes and Hawes lost the difference between 316 and 284—32 votes. The election judges and clerks at the election on November 2, in that ward and precinct, showed by their return that they counted 316 votes for Maj. Hawes. The recount clerks here in this office found 30 ballots missing. I say, by elimination it is absolutely certain that through carelessness or deliberate fraud Maj. Hawes was deprived of 30 votes, and which we claim he is entitled to, and this board, recognizing the rule that the sworn election officials are presumed to do their duty, is empowered to count those ballots in favor of the contestee, and those 30 votes voted for Maj. Hawes should not be, under the Supreme Court decision, disenfranchised through carelessness of the election officials.

Mr. Dempsey. In view of the fact that there are 32 more names on the poll books——

Mr. Feigenbaum. There are 30. We would like to be heard on that point before the board acts on it.

Mr. Arnold. Get the ring sheet.

Mr. Feigenbaum. We do not dispute that.

Mr. Arnold. What 30 numbers are they? That is what I am talking about.

Mr. Cummings. They are, necessarily, by the process of elimination, Hawes votes.

Mr. Arnold. I understand; but the ring sheet would show where they were missing from and show whether they were consecutive.

Mr. Feigenbaum. We want to make this point: The recount—the clerks appointed by the board of election commissioners go over the ballots and count them, as all knew, without regard to the actual count had by the clerks on that election day. Now, the only inference and the only manner in which the board could add 30 votes to Maj. Hawes because of the 30 missing would be to presume that those 30 missing ballots as counted originally on November 2 were correctly so counted for Maj. Hawes; and if those votes had actually been cast for Mr. Bogy and been counted on November 2 for Maj. Hawes, then the board will now presume that the election officials originally counted them correctly; that in face of the figures that you have run into continuously that errors were made from time to time by the election officials. Here is a particular instance where an error was made on a large scale. In the twentieth ward, fourteenth precinct, the poll book showed Bogy received——

Mr. Arnold. What is the number of the highest ballot on there?

Mr. Dempsey. It ought to be 416.

Mr. Arnold. Here is my theory about that. I understand this case; I was present when this matter came up.

Mr. Cummings. Just a minute; let me add this for the record. That it occurred in a great many wards. It totals around 100 votes that Maj. Hawes lost. Mr. Bogy gains 10 votes by the same——

Mr. Arnold. You are making a statement there that will have to be borne out by the record.

Mr. Feigenbaum. I would like to conclude my statement. In the twentieth ward, fourteenth precinct, this is what occurred: Mr. Bogy on the poll book received 233 votes, Hawes 153. That is on the poll books. It is reversed in the count of the ballots.

Mr. Cummings. No.

Mr. Lammert. How can the poll books show anything?

Mr. Feigenbaum. That is my point, the poll books can not show anything.

Mr. Arnold. If you will listen to me a minute, I will give you my version about this case; I paid some attention to it when it occurred out there. There are 416 names on the poll book. Let me ask you this question, now: Do the number of ballots in the box plus the number of missing ballots balance with the number of names on the poll book?

Mr. Barrett. Yes.

Mr. Dempsey. Sure; that has to happen.

Mr. Feigenbaum. How does it happen?

Mr. Arnold. Because all you have to do is subtract the number of ballots from the number of names on the poll books.

Mr. Feigenbaum. It might be 30 over.

Mr. Arnold. I say, do the ballots, plus the number of missing ballots, correspond?

Mr. Cummings. Yes.

Mr. Dempsey. Here is what you mean: Does the number accredited to each candidate in the statement correspond with the names on the poll books?

Mr. Arnold. I mean just what I said. Do the number of ballots in the box plus the number of missing ballots equal the number of names on the poll books? That is what I want to ascertain.

Mr. Cummings. Absolutely.

Mr. Arnold. There is another question. If the missing ballots were illegal votes and were added to the box or put into the box after or during the count, or after the election had closed, and the names were written on the poll books, then they would be in consecutive number and would be the last ones, as a matter of fact.

Mr. Dempsey. Yes, sir.

Mr. Arnold. If the missing ballots and the ring sheet show the ballots missing—if the ring sheet shows those ballots were cast at different times during the day, then that is almost conclusive that they were not added to or put in the ballot box after the election closed and the names added to the poll books.

Mr. Dempsey. Yes.

Mr. Arnold. Here is ballot 16 missing and No. 20 missing, 58 is missing, 87 missing, 91 is missing, 104 is missing, 122 is missing, and so on down the line, 208, 209, and 210 are missing. In the absence of fraud—that is, in the absence of any evidence that these ballots were fraudulently placed in the box and the names were fraudulently written on the poll books—the presumption is the ballots were there when the ballots were counted; that is, the legal presumption that follows. Of course the law does not declare or denounce an unnumbered ballot as a fraudulent ballot. Under those circumstances, if I was called upon as a judge to pass upon this record, if contestant does not offer any testimony outside of the recount and the poll books, if 30 ballots had been fraudulently placed in the box, the contestee and contestant both would be entitled to the returns in that precinct, whatever they show. If the evidence is computed on your count, you are short, you are entitled to what the returns show, and the contestee is entitled to the face of the returns. It is not my idea that the board should make any ruling on that proposition, except this, we ought to certify that the returns in this precinct show what the returns show and count that in among the votes given for the contestant and the contestee. We ought to also show the facts in regard to the missing ballots. That ought to be in the statement.

Mr. Buder. I am with you about giving them a full, complete record of the facts you relate, and I have no doubt but what the body passing upon them would be moved to hold likewise, but the ballots not being there, have we a right to put them in a total which shows ballots which had been counted——

Mr. Arnold. Under the stipulation we have.

Mr. Feigenbaum. The stipulation says count the ballots, and you can not count ballots that are not there.

Mr. Dempsey. Let me make this statement. You find that the total number cast for all of the candidates equals the high number in the poll book?

Mr. Arnold. Yes.

Mr. Dempsey. So that is perfectly regular.

Mr. Arnold. We do not make any decision.

Mr. Buder. You are putting a total in there on ballots you have not had a chance to see whether they are numbered or initialed, excepting that you certify the return of the judges, and then, on the strength of these returns, you count those ballots. I don't see how that would be good policy.

Mr. Feigenbaum. One question, I think, that has been overlooked in this that I would like to note. There are two ways in which those ballots could be missing. One way would be that those ballots never got into the box in the first place and the names appeared on the books as men came in to vote. For some reason these ballots have gotten away.

Mr. ARNOLD. But the judges have certified they counted them.

Mr. FEIGENBAUM. The second way would be they were in the evening and lost since.

Mr. ARNOLD. Lost after the count.

Mr. FEIGENBAUM. There is no way of telling whether those ballots were ever there when the counting was done and this count was not simply made to correspond to the number on the poll books.

Mr. ARNOLD. The judges have certified under their oaths that those ballots were in there, and you have no evidence to the contrary except the ballots are missing from the box.

The NOTARY PUBLIC. I would insist that when you speak you speak either to the chairman or commissioner so the stenographer can get everything down. I thought this was a meeting of the board——

Mr. BUDER. This is a meeting of the board. I guess that is what it is.

Mr. FEIGENBAUM. I want to submit this, under the stipulation that has been talked of so much the board was to count the ballots they find and not to rule on ballots they do not find. These ballots are missing. I agree with all of the commissioners that the note should be made, certainly. The record ought to show what became of those, if it is known. I do not think under that stipulation or under any regulation of recount the board should have the right to count votes they never saw or do not know anything about.

Mr. CUMMINGS. Let me read this point of the stipulation under which this recount was taken. "And the board shall certify the result of said recount, showing the number of ballots cast and counted for contestee and contestant on the respective ballots cast at said election and the number of ballots cast for the contestant and contestee and rejected by the judges and clerks."

The next paragraph: "It is further stipulated and agreed that in case the validity of any ballot for either contestant or contestee is challenged the question shall be decided by the board of election commissioners."

I think that stipulation clearly gives the board the power to decide this question and count those ballots or not, as it sees fit.

Mr. FEIGENBAUM. That stipulation is the best evidence of what I have said. It says the board shall go through the ballots cast and counted. Counted by whom? Not by some one else, but its designated agents.

Mr. ARNOLD. Mr. Commissioner, may I be heard on this?

Mr. GRODZKI. Judge Arnold.

Mr. ARNOLD. I am willing to vote, and I move that the board of election commissioners certify the vote as recounted by the counters in this office and the vote as returned by the judges and clerks of the election; that the recount together with the return be certified.

Mr. BUDER. The question they want to know is which total you are going to take. The vital interest is which total you are going to take.

Mr. ARNOLD. We certify the number of votes polled in this precinct as shown by the recount of the judges here, so many votes for the contestee and the contestant, and the result of the election as certified by the judges and clerks for contestant and contestee are so many votes.

Mr. BUDER. That still does not hit what they are driving at.

Mr. CUMMINGS. Let me make the suggestion that it does not reach the question, for the simple reason that the elimination of the returns on the other candidates, the Socialist candidate, the Socialist-Labor, the Farmer-Workers, and the Prohibition, it does not show that those missing ballots——

Mr. ARNOLD. I should have stated in my motion the vote cast for all candidates as certified to by the judges and clerks of election.

Mr. BUDER. I will second that motion.

Mr. BARRETT. Before you put that motion let me ask you to do this. I am going to ask the board in ward 18, precinct 12, that the board count 30 ballots that are missing for Harry B. Hawes, candidate for Congress, in the election in contest, in addition to what the recount of 284 votes for Hawes shows, for the reason that there was 416 persons shown to have voted in that precinct on election day, and the returns made by the judges and clerks of election for various candidates for that office show a total number of ballots counted by them of 416, and that by taking the votes returned and recounted for Bogy, Long, Spaita, Allen, and the Prohibition candidate, it shows that 30 ballots were really cast for Hawes and he is the man that suffered by this recount, if they are not included, and they could not be counted for any other candidate.

Mr. CUMMINGS. And that the total vote certified by this board for Maj. Hawes be 314 instead of 284.

Mr. FEIGENBAUM. We want to here object to any addition of 30 ballots to the count by the board of election commissioners, for the reason that the 30 ballots referred to were not in the boxes when they were opened in this office, and that this board is unable, except by pure presumption, to say for whom those ballots were properly and legally cast by the voters; that the motion of the chairman of the board, seconded by a member of the board, Mr. Buder, includes all that properly could be done by this board in certifying the actual number of those counted in this office and also showing the number certified to by the election clerks on November 2, 1920, in that precinct and ward.

Mr. BARRETT. I want to direct attention to this provision of the stipulation: "It is further stipulated and agreed that in case the validity of any ballot of contestee or contestant shall be challenged, the question shall be decided by the board of election commissioners," and the stipulation also further provides that the board shall certify the result of such recount, showing the number of ballots cast and counted for the contestant and contestee on the respective ballots cast at said election, and the number of ballots cast for the contestant and contestee and rejected by the judges and clerks of election.

Mr. BUDER. I call for a vote on the question.

Mr. BARRETT. I would like to have a vote, may it please you, Mr. Chairman, on my——

Mr. ARNOLD. Nobody put your motion.

Mr. BUDER. Those were in the nature of remarks on this question, as I understand.

Mr. BARRETT. Suppose you withdraw yours and let us determine this.

Mr. FEIGENBAUM. I object to that form of proceeding, and the board has the right to conduct this meeting as it sees fit.

Mr. ARNOLD. The only way we can decide this question, Mr. Barrett, is to hear both sides, and let us dispose of it.

Mr. BARRETT. That is what I would like to have you do.

Mr. ARNOD. If there is any gentleman of the board that would like to make your motion?

Mr. BUDER. How can we make it until this motion is disposed of. I have a motion to make and I will vote "no" on this motion if you put it.

Mr. ARNOLD. Read my motion.

(Thereupon the motion of the chairman, Mr. Arnold, was read as follows:)

"I am willing to vote, and I move that the board of election commissioners certify the vote as recounted by the counters in this office and the vote as returned by the judges and clerks of the election; that the recount, together with the return, be certified. I should have stated in my motion the vote cast for all candidates as certified to by the judges and clerks of election."

Mr. HAWES. Mr. Chairman, there was a large number of ballots cast for me in which my name was plainly written in but the name of Bogy was not scratched. The board ruled on that, over our exception, and counted these ballots for Mr. Bogy and put them in the final tabulation—they were counted as "no votes," which was a distinct loss for me of some 300 votes. The board ruled on that and they were remitted. The clear intent of this agreement was that on matters of dispute the board should rule and counsel for either side could put their exception into the record to that ruling. Now, we are asking that the tabulation, the total tabulation, shall credit Mr. Bogy in those precincts where the record is complete with ballots that are missing that he is entitled to, and that I be credited in the same manner with those to which I am entitled, and that these shall be included as a part of the total tabulation which will be presented to Congress.

Mr. ARNOLD. Mr. Hawes, let me make one explanation. I do not think you gentlemen understand my motion.

Mr. HAWES. I think I do.

Mr. ARNOLD. That is, the practical effect of it. The effect of the certification would be simply this: On the recount by the clerks in this office the result is as follows, stating the number of votes for each candidate. The returns of the judges and clerks of the election in this precinct are as follows: Total vote received by the candidates for office in this precinct as certified by the board of election commissioners is as follows: That gives you credit for the 30 missing ballots, and if there was any missing for him it gives him credit for those missing ballots in our tabulation.

Mr. HAWES. That is what I thought.

Mr. FEIGENBAUM. Your motion does not say so.

Mr. BUDER. The motion does not say about the taubulation.

Mr. ARNOLD. I didn't say anything about the tabulation.

Mr. DEMPSEY. I will second that motion.

Mr. ARNOLD. It is already seconded.

Mr. DEMPSEY. I didn't understand it.

Mr. ARNOLD. Let's understand each other on this. I think we are both agreed on it. That certification is open to the objections of contestant, and if the committee disagrees with our count they can strike out the certification of the returns of the judges and clerks and give you two men the vote that was found here in the ballot box as counted by the clerks. That fixes the record. You can say that we were guilty of error in making that certification, and therefore you say the committee should eliminate from the consideration of the committee the certification of the judges and clerks of election, and that the result would be what the clerks found here on the recount.

Mr. BUDER. Your motion does not so state.

Mr. ARNOLD. The certificate would show it.

Mr. BUDER. The motion that you made does not so state.

Mr. ARNOLD. Read the motion.

(Thereupon the motion was read as follows:)

"I am willing to vote, and I move that the board of election commissioners certify the vote as recounted by the counters in this office and the vote as returned by the judges and clerks of the election; that the recount together with the return be certified. I should have stated in my motion the vote cast for all candidates as certified to by the judges and clerks of election."

Mr. FEIGENBAUM. I can't see that, how you can drive that into the totals.

Mr. BUDER. That does not say anything about tabulating any total at all, except certifying the facts.

Mr. DEMPSEY. Is there any objection to this, making the motion based on the figures that are to be made?

Mr. ARNOLD. How do you mean, based on the figures?

Mr. DEMPSEY. You make a motion that this be the count, 316 votes for Harry B. Hawes, 93 votes for Bogy, 7 for Long, and none for the others, and then put in your addenda.

Mr. ARNOLD. My idea on that was we were making a certification on the recount only, and that is the truth. I am of the impression we have the right to decide whether these 30 missing ballots—at least I am satisfied, in my own mind, this stipulation gives us the power——

Mr. BARRETT. Yes.

Mr. ARNOLD (continuing). To settle that question right here and the contestant and contestee are bound by that decision. I think they are if the committee wants to hold them to it. Of course, I can not tell what the committee in Congress will do.

Mr. FEIGENBAUM. At the outset, the motion put by the chairman of the board is very clearly to the effect that the record is made and these votes shall be certified and likewise the returns of the election officials at the general election shall be certified. The explanation of the chairman of the board now practically changes the entire motion. If the 30 ballots in dispute and not appearing before the board in the eighteenth ward, twelfth precinct, are counted for contestee, we want, in this connection, to point out that the board has had before it the tabulating sheets of the various precincts in the several wards comprising the eleventh congressional district and that those figures show very clearly that in at least one-third of all of the precincts the number of names on the poll books do not agree with the number of ballots in the ballot boxes. I refer to three or four I have before me, precinct 1, ward 2, where the number of names on the poll book is 416; the number of ballots in the box 413; precinct 2 of ward 3, where the number of names on the poll books is 357 and the number of ballots in the box only 348.

Mr. ARNOLD. What precinct?

Mr. FEIGENBAUM. Precinct 2, ward 3. In ward 3, precinct 3, we have 420 names on the poll books and 409 ballots in the box. Ward 4, precinct 1, we have 291 names on the poll books and 288 ballots in the box. In the next precinct in the same ward we find one name more on the poll books than in the ballot boxes. The same is true of the same ward, precinct 4, and all the way down. At least one-third of the precincts show a discrepancy between the number of votes as tabulated on the poll books and the number of ballots in the boxes, and this is the only instance in which the board will certify to something they did not see, these 30 ballots proposed by the contestee as having been cast for him, when there is no evidence before the board as to whom they were actually cast for except the poll books, which were not taken into consideration in making up the tabulation in any other precinct except this one.

Mr. HAWES. The contestant, yielding to the request of the contestee, joined with him in a stipulation regarding the entire matter of a recount, and that stipulation provided that where there was a dispute about the counting of a ballot that this board should rule as to whether contestant or the contestee was entitled to that vote. The board has ruled on that subject in the matter where my name was written in and the voter neglected to scratch the name of Mr. Bogy, and we believe, under this stipulation, signed by the contestant and his counsel, that the board should, in any of its tabulations, pass on all disputed questions, subject to the objections of counsel for either side, but that in the final tabulation a ruling should be made on every ballot in dispute. This has been the first opportunity that the contestee has had to present this matter before the board. It has been discussed informally before the board on a number of occasions, and we have always notified the board and notified the contestant that at the proper time, which seems to be now, we would claim that these missing ballots, through no fault of ours, should be counted for either Mr. Bogy or myself in all the precincts of the 155.

Mr. FEIGENBAUM. I want to make a short statement. The contestee has so often referred to one phase of the action of the board, it almost giving the appearance that the only questions with reference to scratched ballots were those where the name of Bogy was not scratched and the name of Hawes written in, I feel that we should add to that that ruling was likewise enforced by the board in cases where the name Hawes was not scratched and Bogy written in. That under those circumstances, as well as under the others mentioned by the contestee, the board ruled those were not legal or proper ballots and ruled them as "no ballots." That contestant made no objection, and makes no objection to the board ruling, realizing that such ballots can not properly be counted. The board has the right—at least we concede that it has a perfect right under the stipulation—to decide on the validity of any ballot before them; but the present question does not affect the question of validity of ballots before them, because those 30 ballots are not before them, and are entirely different from any others and not covered by any stipulation.

Mr. GRODZKY. Will the board decide that motion? We are losing a lot of valuable time.

Mr. ARNOLD. Are you ready for the question?

Mr. DEMPSEY. Question.

Mr. BUDER. Before you put the question, is the question going to be submitted as it originally was put?

Mr. ARNOLD. Yes.

Mr. BUDER. All right; I vote "aye" on it.

Mr. LAMMERT. Aye.

Mr. DEMPSEY. Aye.

Mr. HAWES. I still do not think the commissioner understands this, because, as I understand it, I get credit in the tabulation and Bogy does, too.

Mr. BUDER. No; it does not say anything about the tabulation. It merely says certifying what the count was in that precinct by our clerks and by——

Mr. DEMPSEY. Let us have that clear.

Mr. HAWES. Mr. Chairman of the Board, this motion having been adopted, I understand that this will give me and Mr. Bogy credit in the total tabulation certified by this board——

Mr. ARNOLD. Of the missing ballots.

Mr. HAWES. Of the missing ballots under similar circumstances.

Mr. ARNOLD. That is my understanding of it.

Mr. HAWES. I would like to have a ruling of the board, whether that is done or not, or whether that is your understanding.

Mr. BUDER. You may state that Commissioner Buder, voting "aye" on the motion, does not so understand it and distinctly raises the question that it does not include those votes in a tabulation, but merely a certification of the count made by our assistants, the clerks of the election board, as also a certification of the returns or count made by the precinct men on election day.

Mr. HAWES. May I ask for a ruling on that, Mr. Chairman? Does that go in the tabulation?

Mr. Arnold. As I stated it, it goes in.

Mr. Cummings. All the other members of the board understand it with the chairman but Mr. Buder.

Mr. Lammert. That is the way I understand it; the way Judge Arnold made the motion is the way I understand it.

Mr. Dempsey. That is my understanding on Judge Arnold's motion; I was going to make the motion if he didn't, because I didn't understand it.

Mr. Barrett. I ask that the same order be made with respect to ward 27, precinct 21; that Hawes be credited with 29, the same circumstances existing in that precinct.

Mr. Arnold. Up to the present time the recapitulations made of the recount in this office are in compliance with the motion I have heretofore made in regard to precinct 12, ward 18. The certificate of the board should contain the following addenda: The board certifies that the recount in ward 18, precinct 12, shows there were 90 ballots in the box cast for the contestant and 284 ballots in the box for contestee. The returns of the judges and clerks show there were 30 ballots cast for the contestee but these ballots were not in the box when opened in this office. Under the stipulation the board decides that there should be added in the contestee's vote in the recount 30 votes, which makes his total in this precinct 314. That is the certificate, as I understand it.

Mr. Dempsey. Will that show in our sum total?

Mr. Arnold. That will be added.

Mr. Dempsey. Added in the total?

Mr. Arnold. Yes.

Mr. Feigenbaum. Before the board proceeds further, on the same question, with reference to other precincts and wards, contestant wants to make an objection to the procedure of the board as contrary to the understanding of contestant as to when these final sheets would be completed and what would be done. The contestant further states that at the last meeting of the board, last Friday, we were advised that the sheets would be completed and a copy given us not later than Tuesday morning when we arrived here at 9 o'clock. From this statement we felt that we had a right to presume that no further opportunity would be given either contestant or contestee to change the figures of the board, and for that reason contestant did not undertake to check through any of the sheets so as to bring before the board questions of missing ballots cast in favor of contestant, and contestant is, therefore, not now prepared to submit to the board the question of any missing ballots cast in his favor because of the lack of information or advice from the board that opportunity would be given at this meeting to present same.

We want to further say that contestant understood that this morning we would proceed with depositions, and that those final sheets would be given us to enable us to so proceed with the depositions, and that the matter of taking photographs would be disposed of before this time and we given an opportunity to take whatever photographs the board would decide we were entitled to; that we have attempted on several occasions, or rather endeavored, to get the board to act on the question of our right to take photographs of ballots showing a similarity of handwriting on large groups of ballots in the same precinct, and that this is the third time we have come here with this request, and the time within which we can conclude, and must conclude, our testimony and the taking of depositions is drawing short, and we submit that these matters, taken up at this time contrary to our understanding, are for the purpose of delaying us in taking our photographs and bringing this evidence before the congressional committee.

Mr. Hawes. I desire to make a statement. During the recount in the board of election commissioners' office a tabulation was made by two Republican clerks and two Democratic clerks, in the presence of watchers selected by the contestant and the contestee. These original papers showing their total of the recount were furnished to the contestant at the time the recount was completed, and the tabulation now under discussion is simply placing a total upon these 155 reports, all of which have been or could have been in the hands of contestant for a week or more.

As to the matter of delay, referred to by counsel for contestant, I desire to state that the usual form of taking testimony was by shorthand reports taken by a commissioner or notary public; that, in order to expedite the proceedings of the recount, contestee waived any objection to the form of stipulation entered into and agreed upon by the contestee and the board of election commissioners, and that from the beginning of the recount to the present time the contestee cooperated with contestant in every method to procure speed in the recount, waiving objections and joining with contestant in an unusual procedure of making a recount from 9 o'clock in the morning until 9 o'clock in the evening, and making no objection to the unusual number of clerks employed for this purpose. That contestee, from the start to this moment, has raised no objection to the photographing of ballots, and that such delays as have been occasioned have been the result of the negligence or lack of preparation of contestant and his counsel.

Mr. Bogy. May I make a statement for the record?

Mr. Arnold. Go ahead.

Mr. Bogy. I want to state, and reiterate what I said before, that at the time the stipulation was entered into, which was asked, I believe, by Judge Arnold, it was understood between myself and the counsel that I had then here with me, Mr. C. F. Bauer, in the presence of witnesses, that I was to have a full opportunity to compare all of the scratched ballots so as to see where the fraud might be; and I requested that the board furnish me with a photographic copy, or I would have the right to photograph these ballots.

I further wish to state, so that it will be in the record, that there were some irregularities in the recount, namely, at one table the ring-up showed 472 ballots rung up and only 441 in the ballot box. Upon my insisting upon that box being reopened and recounted, against the protest of a number of people, they finally consented to reopen the box. I will give you the number of the precinct and ward in a moment; and when they opened that box again, after the recount, they found that there were 31 ballots that in the recount they had failed to count for me, and every one of them were votes for Bogy for Congress.

I wish further to state at this time that there were a number of ballot boxes that came from the vaults already opened.

I wish to further state that I myself saw, even after the recount was completed, that one of the boxes, namely, the first precinct of the twentieth ward, after the recount had been made, and that box had been sealed, it was again reopened.

I came here this morning expecting that we would be able to proceed to take photographs of some of these ballots because it has been my belief that is where a great deal of the fraud existed. The photographer was here, prepared to go on with them, according to my understanding, and all of this time has been consumed, to my mind, without accomplishing what was my purpose to get, a photographic copy of the ballots where there had been scratching.

The recount, as I said before, showed irregularities, and I was absolutely refused permission, and my watchers, the few that I had—I didn't have them at every table—but the few I had were refused permission to examine the scratched ballots and make any memoranda of any scratched ballots, or even the information as to how many scratched ballots there were in each particular precinct where they were watching.

Mr. Hawes. I desire this, also, to go into the record: There are now present in this room four election commissioners, Mr. Arnold, Mr. Buder, Mr. Dempsey, and Mr. Lammert. When Notary Grodzki appeared before this board on the 11th of this month with contestant, contestee, and their counsel, the president of the board asked the contestant and his counsel what examination they desired the board to make. The president of the board, in the presence of the board, stated to contestant and counsel that the usual procedure for a recount in State contests was a court order specifically directing the Board of Election Commissioners to furnish certain specific information. Thereupon the president of the board, in the presence of the board, asked contestant and his counsel to reduce to writing the exact examination which he desired the board to make. That contestant then made an oral statement of what he desired, and the president of this board again requested contestant and his counsel to put this matter in writing. Thereupon a stipulation was drawn up between the board and the contestant, so that there might be no confusion or misunderstanding about the recount, and I shall ask that that stipulation be inserted at this time.

Mr. Grodzki. Are you asking the members of the board to vote on that?

Mr. Hawes. That the stipulation go in the record.

STIPULATION.

St. Louis, Mo., *January 11, 1921.*

It is stipulated and agreed between contestant and contestee and their respective counsel that the board of election commissioners shall open the ballot boxes used in the eleventh congressional district in the election in contest and recount said ballots on the office of Representative in the Sixty-seventh Congress for the eleventh congressional district of Missouri, and shall certify the result of said recount showing the number of ballots cast and counted for the contestant and contestee on the respective ballots cast at said election, and the number of ballots cast for the contestant and contestee and rejected by the judges and clerks of election.

It is further stipulated and agreed that in case the validity of any ballots for either the contestant or contestee is challenged the question shall be decided by the board of election commissioners.

It is further stipulated and agreed that during the recount of said ballots no comparison shall be made of the ballots with the poll books.

Provided that this recount hereinabove provided for is to be taken during the time allowed for the contestant to present his evidence and shall not be charged to the time of the contestee.

Provided further, that nothing in this stipulation shall preclude the contestee from making an examination of the ballots during the 40 days' time allowed to him by law.

Provided that the contestee does not waive any objections he may desire to make as to the competency, relevancy, or materiality of any testimony offered on behalf of the contestant, or shown in the recount.

Provided that the contestant does not waive any objections he may desire to make as to the competency, relevancy, or materiality of any testimony offered on behalf of the contestee, or shown in the recount.

It is further agreed and stipulated that all records made up or testimony taken in this case shall be in triplicate and each side shall be furnished true copies thereof as soon as transcribed or written, and certified by the notary taking the depositions.

BERNARD P. BOGY,
Contestant.

CORNELIUS F. BAUER,
Attorney for Contestant.

HARRY B. HAWES,
Contestee.

CAMPBELL CUMMINGS,
Attorney for Contestee.

PETER T. BARRETT,
Attorney for Contestee.

After the stipulation had been agreed to contestee asked contestant how many watchers he desired, and contestant, in the presence of witnesses and in presence of members of the board, stated that he desired five watchers. On the following morning contestee, to comply with the requirement of five watchers, produced five watchers. Contestant then said that he desired 10 watchers, and it was then agreed that contestant should have as many watchers as he desired and contestee the same number. And, finally, it was mutually agreed, before members of this board, that contestant and contestee should have one watcher placed at each table, to be selected by them.

At the time the stipulation was agreed to it was read and reread and revised by the board, by contestant, and his counsel—the stipulation saving contestant many thousands of dollars and placing the burden of this cost upon the State of Missouri. The orders of the board relating to the conduct of the recount were reduced to writing and submitted to contestant and contestant's counsel and approved by them, and the recount was made under the stipulation signed by contestant and counsel, and by a method reduced to writing, which was stipulated and agreed to by contestant and counsel. Contestee waived his rights of objection under the stipulation for the sole and express purpose of expediting the recount, because, if the recount had been conducted before a commissioner or notary, and each movement of the recount reduced to writing, it would have been impossible for contestant to have secured a proper recount in the time which was not then consumed by him. Contestee, from the first, has waived objections. The notary public hearing these depositions was selected by Mr. Bogy and no objection made by contestee. The stenographers taking this testimony were selected by Mr. Bogy, without consultation with contestee, and contestee made no objection.

Mr. FEIGENBAUM. Pardon me, Mr. Chairman and Mr. Commissioner, I want to object at this time to all of this; there is no relevancy to all of this, and the only object it can serve is to delay our taking depositions and is simply to consume time. That is simply a résumé of things that will appear in the depositions, and that already appear, and we simply want to note our objection.

Mr. Hawes. If contestant takes this position, I will conclude my remarks, reserving the right to examine the board on cross-examination as to the method of procedure in the recount, so that the committee in Congress may understand every detail of the procedure and recount.

Mr. Arnold. I would like to make a statement for the record. I desire to make this statement in order that there may be no misunderstanding of the attitude of the board in regard to the conducting of this contest in this office and to clear up the imputations contained in the statement of counsel for the contestant and the contestant himself in regard to the conducting of the recount.

The board has suspended substantially all of its official business in order to facilitate the recount. If the testimony on behalf of the contestant had been taken in the usual and customary manner, the board would have spent not less than 30 days in the recount of the ballots. It was to obviate this great delay that the chairman of the board suggested the stipulation which is in the record. To further expedite the recount of the ballots the board put on the largest number of teams to recount the ballots that has ever been used in an election contest in this office. Not only that, but the board held night sessions for five nights in order to hasten the recount.

In regard to any delay by the board in the matter of photographing ballots, the chairman of the board has stated to the contestant that he could photograph such ballots as he desired at any time he desired, since the recount closed one week ago.

In regard to the error at one of the tables referred to by the contestant in the number of ballots rung on the ring sheet and counted as cast for contestant and contestee, the chairman of the board investigated the matter and found that there was no intention on the part of the counters to commit any wrong or fraud in recounting the ballots in that precinct. The irregularity complained of was the result of mistake. The recount at that table was conducted by two Republicans and two Democrats, in the presence of the watcher of the contestant.

As regards ballot boxes being opened, the ballot boxes used by the judges and clerks to inclose the ballots are made of pasteboard and are about 14 inches long, 4 inches wide, and 6 inches deep; and it is the duty of the judges and clerks of election to close the top of the box and seal it with a paper seal. It is not uncommon for the seal to dry and to become loose. If any of the ballot boxes were opened by any of the employees of this office without authority, that matter was not brought to the attention of the board until to-day. Up until now we have heard no complaint that any of the boxes had been reopened after the boxes had been fastened by the clerks. The ballot boxes are kept in a vault where the temperature is at all times very great, and in a large number of instances the seals used by the judges and clerks on the ballot boxes become loosened and fall from the box. The ballot boxes are kept under lock and key in a vault which can not be entered except in the presence of a Democratic and a Republican clerk of this office. A Democratic and Republican clerk of this office were kept in the vault during the recount. The board heard no complaint from any of the clerks in this vault that anyone had improperly tampered with any of the ballot boxes in any way.

Gentlemen, also let me make this statement in regard to the procedure here on these precincts where this discrepancy has been found. I think inasmuch as this board is required to make the decisions in regard to those disputed ballots, that we should be given the numbers of the precincts where our ruling is invoked, and we should be allowed to proceed and make our decision and then announce it; and then, if there are any objections to be made to the decision by either side, they may do so, but I do not believe that we ought to have our proceedings interrupted by either side while we are going over this data and the poll books to determine the disputed questions submitted for our decision. I think we ought to be allowed to proceed along those lines. I do not believe that that would preclude either side from making a complete record on every matter that is presented for the decision of the board; otherwise we will be here interminably if every time we undertake to discuss any particular point in regard to this matter we are to be interrupted by objections put into the record.

Mr. Feigenbaum. May I ask now that the board consider the matter of permitting us to photograph those ballots? I understood the chairman a few moments ago to say we were permitted to do so any time. Would you care to set a definite date when we can do that?

Mr. ARNOLD. I said you could have the ballots here in the presence of the clerks to photograph them.

Mr. FEIGENBAUM. I will ask that you permit us this afternoon or to-morrow, when we can get our photographer up here—we had him here for several hours—to permit us to photograph the ballots.

Mr. CUMMINGS. He was to give us the number of the ballots he wished to photograph. He gave us five ballots, and they were photographed, and now he comes with a request for photographs of any ballots that he sees fit in half a dozen precincts.

Mr. ARNOLD. As my understanding was, we agreed to give these gentlemen, both sides, any information outside of the matters that were contained in the stipulation of the recount here, and I do not know that there was to be any objection to his photographing ballots.

Mr. BARRETT. We asked him to state the number and he has not stated it.

Mr. FEIGENBAUM. I have given them the only list I could; the list of the precincts and the ward, six precincts in particular that we wanted photographed—the scratched ballots.

Mr. ARNOLD. Scratched ballots?

Mr. FEIGENBAUM. Yes.

Mr. ARNOLD. How many are there?

Mr. FEIGENBAUM. That is what I can not state. Some of these are not——

Mr. ARNOLD. You do not mean you are going to reopen the boxes and take out the scratched ballots?

Mr. FEIGENBAUM. Of course, you have to reopen them to see that—in the six precincts.

Mr. ARNOLD. Let me make a statement in regard to the scratched ballots.

Mr. FEIGENBAUM. All right.

Mr. ARNOLD. My understanding about the scratched-ballot question is this, these recount clerks were instructed, pursuant to the stipulation, to open the ballot boxes and to recount the ballots, and to make no record, except as to totals, of any ballots in the boxes about the legality of which there was no dispute among themselves. That included scratched as well as straight ballots, and if the clerks agreed that a ballot was properly scratched and properly voted, their decision was to be binding on the contestant and contestee. That was my understanding of that. Wasn't that yours, Mr. Buder?

Mr. BUDER. Excepting that at the time it was stated they could have photographs of any of the ballots they desired.

Mr. ARNOLD. Disputed ballots.

Mr. CUMMINGS. Yes; disputed ballots.

Mr. FEIGENBAUM. No; scratched ballots.

Mr. ARNOLD. There was no agreement you were to have any photographs of any scratched ballots, because that would necessitate our going through the boxes and picking out probably 10,000 or 15,000 scratched ballots, or whatever there were in there; every vote Mr. Bogy got on the Democratic ticket was on a scratched ballot, and the Socialist ticket, or any other ticket, and every vote the contestee got on other than his own ballot was a scratched ballot.

Mr. BUDER. I think they are entitled to a certified copy of every paper they ask for in our possession.

Mr. ARNOLD. They are entitled to make it.

Mr. FEIGENBAUM. That is all we ask. We ask the board to make copy of these scratched ballots on the Democratic ticket and the Socialist ticket and the Farmer-Labor ticket, in six precincts. We ask that only six be opened.

Mr. ARNOLD. You want the scratched Republican ballots taken out of those precincts?

Mr. FEIGENBAUM. Scratched—Republican and Farmer-Labor and Socialist—in those six precincts.

Mr. CUMMINGS. Mr. Chairman, we object to that, for the simple reason that Congress can not allow contestee to exceed $2,000 for expenses. There is nothing in the law of Congress to permit the photographing of ballots. If the contestee proceeds to photograph a large number of ballots that may have some similarity of handwriting, it will necessitate the contestee in return to ask the photographing of all his scratched ballots to rebut a possible presumption of fraud. It will exhaust a large portion of the expense money we are allowed by Congress, and prove absolutely nothing. We will concede that necessarily in every precinct there are not only some ballots showing a similarity of handwriting in scratched ballots, but necessarily an identical handwriting, as happens in every precinct where there are ignorant voters who can not read or write and who make the request of the clerk to scratch their ballot for them.

Mr. ARNOLD. Let me make this statement to you in regard to the stipulation. I will state my position on that. I take the ground we are not to photograph any ballot which has not been challenged on the ground that it is a forgery or an illegal ballot. This stipulation is as plain as the human hand can make it, stating: "It is further stipulated and agreed that in case the validity of any ballot for either the contestant or contestee is challenged the question shall be decided by the board of election commissioners."

Mr. BUDER. That is true, and we have decided on that, and our tabulation and certification take care of that.

Mr. ARNOLD. We are willing to photograph every ballot they challenge at that time.

Mr. BUDER. What I say is, they are entitled to every official paper in our possession.

Mr. ARNOLD. You mean by that "ballot"?

Mr. BUDER. Yes; because it is my recollection that it has been held in a contest that is an official paper in our possession. For the purposes of this contest it is.

Mr. ARNOLD. My understanding is they were to challenge the ballots while the recount was on, and we gave them instructions on that, and we gave them a form for that purpose, and they have not noted it.

Mr. BUDER. That is true, and they are probably bound by what their stipulation says, but when they ask for a certain paper, I think we have to give it to them.

Mr. DEMPSEY. Yes, I think so; but when they ask for a certain number of hundreds of papers in the office—I am for giving them certain papers.

Mr. FEIGENBAUM. We have described them as well as they can be described.

Mr. BUDER. I do not think we have a right to pass upon that question now.

Mr. ARNOLD. We are to pass on the question of whether they are forgeries or not, under the stipulation.

Mr. FEIGENBAUM. Regardless of whether they are forgeries or not.

Mr. BUDER. They are asking for a paper that is in this office, and I think they are entitled to it.

Mr. CUMMINGS. I do not think they are entitled to saddle one iota of expense onto the contestee that is covered by this stipulation.

Mr. FEIGENBAUM. The expense has nothing to do with this thing.

Mr. CUMMINGS. That is the object of the stipulation, to save you expense and us expense.

Mr. FEIGENBAUM. I submit you can not keep us in the dark as to what was done on election day with these ballots, in the sense you are trying to cut down expense.

Mr. CUMMINGS. I am not doing it for the purpose of cutting down expenses. We did not limit you in the beginning; we asked you what you wanted, and you waived your right.

Mr. FEIGENBAUM. We did not waive any right of photographing any ballots.

Mr. CUMMINGS. And the Election Committee of Congress will so rule, as they have always ruled in the past.

Mr. FEIGENBAUM. That is still open to question, what they will rule, and we will know better——

Mr. ARNOLD. Instruction No. 8 reads as follows: "If there is any doubt as to whether any ballot has been properly marked, the clerk shall place such ballot in an envelope for the decision of the board of election commissioners, and also place in such envelope all ballots that have no corresponding numbers on the poll books and those that have duplicate or triplicate numbers, and also all other disputed ballots." We have passed on the disputed ballots that have been submitted to us. The board has done that and has made a record of it, and that record is in this record, and if you have the numbers of the scratched ballots that you want to photograph, we are willing to take those ballots out of the box and photograph them, but, speaking for myself, I do not vote to reopen the boxes and again separate the scratched ballots for the purpose of having them photographed. I am willing to photograph any specific ballot that you think has been a forgery and put that photograph in the record, or the certificate of this board.

Mr. FEIGENBAUM. So that the board of election commissioners may understand what we desire; we understand very well under the stipulation or under the rules as furnished by the election commissioners for the conducting of this recount the judges and clerks were to decide what were disputed ballots. I have heard that so many times from members of the board that there is no doubt in my mind now as to what this particular thing was—that is, no one had a right to set aside a ballot and have it before the board unless the judges and clerks appointed in this office considered it a disputed ballot. That is not the question involved here at all in our request to photograph certain ballots. We say, regardless of what was termed disputed or not disputed by these men, we claim that certain numbers of ballots were scratched in the same manner—when we say a certain number we say 88 in one precinct, the entire group in one handwriting, and we ask the right to photograph that entire group of 88 ballots to show the identical handwriting.

Mr. Arnold. What are the numbers of them?

Mr. Feigenbaum. They are all the scratched ballots. The numbers we can not give, because we were not permitted to make numbers of ballots.

Mr. Arnold. You could not, but the clerks could and were instructed to make a list of them—all disputed ballots—and when they did not make notations they did not consider them disputed. I understand your request, and I will state to the board that the contestant has asked that he be allowed and that the board reopen up all the boxes and separate all of the scratched Republican ballots in six precincts, and that contestant be permitted to photograph these ballots——

Mr. Feigenbaum. May we set out the precincts?

Mr. Arnold. Yes.

Mr. Feigenbaum. The twelfth precinct of ward 19, the twenty-second and seventeenth precincts of ward 26, the fourteenth precinct in ward 20, the eighth and ninth precincts of ward 22.

Mr. Arnold. Gentlemen and members of the board, you understand the request of the contestant. How do you vote on it?

Mr. Buder. I vote "aye."

Mr. Lammert. No.

Mr. Dempsey. No.

Mr. Arnold. I vote "no." I will state to the contestant if you will give the board the numbers of any specific ballots you desire to photograph we will open the boxes and permit you to do so.

Mr. Feigenbaum. I want to say again we were not permitted to keep any numbers, because the chairman himself has said a moment ago that the only numbers that could be kept were disputed ballots, and we are not asking for what are termed "disputed ballots" by the judges and clerks, and we ask for ballots we consider should be presented to the committee in Congress.

Mr. Arnold. Had we better adjourn at this time?

Mr. Hawes. Contestee is disposed to proceed with all possible speed. If we can place in the record our claims of some five or six precincts, it would take but a few minutes, and then I desire to ask a few question of the board, which, I think, can all be done within the space of one-half hour. Contestant wants to proceed with depositions at another point this afternoon, and I would like to ask the board to continue at this time.

Mr. Arnold. Is that satisfactory to the board, to proceed?

Mr. Dempsey. Yes.

Mr. Lammert. Yes.

Mr. Arnold. We want to say to you, all of you gentlemen participating in this proceeding, that you will allow the board to proceed to pass upon these matters and not interrupt us. If you will give us a list of these precincts where you want us to pass on the same questions that were presented in precinct 12 of the eighteenth ward, we will have a meeting here on that and we will make our decision, and then we will have you present and announce it, and you may make your objections then, whatever they may be.

Mr. Hawes. That is agreeable to us.

Mr. Arnold. All right, proceed with your depositions. We will defer this matter on these six precincts.

Mr. Barrett. I gave them to you and you have them there.

Mr. Arnold. All right.

Mr. Feigenbaum. This deposition is a continuation of the deposition started previously. Judge Arnold recalled.

GLENDY B. ARNOLD, having been first duly sworn, was recalled for further examination on behalf of contestant, and deposes and says:

Direct examination by Mr. FEIGENBAUM:

Q. Please state your name.—A. Glendy B. Arnold.

Q. Judge Arnold, are you chairman of the board of election commissioners for the city of St. Louis, Mo.?—A. Yes, sir.

Q. And as such election board, you had charge of the general election on November 2, 1920?—A. Yes; the board had charge of it.

Q. Did that general election include the election of Congressman fronr the eleventh congressional district of Missouri?—A. Yes, sir.

Q. In a general way, will you outline the character of this election on November 2 with reference to regularities or irregularities that came to your attention as chairman of the board of election commissioners?—A. So far as complaints that came in to the board of election commissioners are concerned, I didn't hear them all. I was at this office throughout the time of the voting and during the time the returns were being received from the judges and clerks, with the possible exception of an hour all told. In regard to the irregularities or trouble, it is a matter of opinion, but so far as my observation went the election was one of the most orderly that the board has conducted since I have been a member of it. There were complaints of various kinds and the board did all in its power to correct any mistakes or suppress any disorder, if there was any disorder. I do not recall any physical disorder of any kind except in one precinct.

Q. What precinct was that, Judge?—A. A report came to the office during the day that a fight had occurred, I believe, in the first precinct of the twentieth ward between a policeman and some voter. Whether he was a voter or not I do not recall, but some person became involved in a controversy with a policeman and the fight ensued.

Q. Was that matter investigated by the board?—A. We made no investigation of it because it occurred outside of the polling place, according to the report that came here, on the street; at least the board made no official investigation of it so far as I recall. There was an arrest made and we did not regard it as calling for any investigation from us, as it did not involve the election judges conducting the election.

Q. Were reports received by you, or by this office, and coming to this office, to the effect that there was a great delay in voting, an unusual delay in many precincts?—A. I believe there were some complaints of that character, as there were in every election. It was not an unusual number, so far as my information is concerned. Some of the other commissioners may have received information which I did not get in regard to delays in voting. I will say this, that three of our commissioners, Messrs. Buder, Lammert, and Dempsey went out whenever they thought it was necessary and undertook to settle disputes and arguments between election officials and the voters.

Q. Were the reports about the delays particularly noted by you in any one congressional district in St. Louis?—A. I do not recall that they were. I will say there was some complaint about a delay in one precinct in the twentieth ward. That is in my present recollection, but what precinct that was I do not recall.

Q. Was that the precinct located at Franklin and Grand?—A. I really do not remember where it was, but some voter called up the office here and I answered the phone, and my recollection is it was a woman, and she said she had trouble in getting to the polls to vote, and I do not recall now, but I think we sent somebody out to that precinct, perhaps one of the commissioners went, or someone of our clerks went out to see what the trouble was.

I will say this, that there ought to have been more complaints at this election than any previous election on account of delays, because we undertook to conduct the election with 600 precincts when we should have had 1,000, and there was one precinct in the twenty-eighth ward which Mr. Lammert and I visited on election morning on our way down and there was a great delay in that precinct in the voting. I think the line there at that precinct was probably 150 feet long. There were probably 1,100 or 1,200 voters registered in that precinct, and we stopped by that precinct at about 6.30 in the morning, and as we came down, riding through the eastern part of the tenth district and the western part of the twelfth district, we saw long lines of voters lined up at the polls, which indicated that there was delay, but the complaints on that account were fewer than we expected. The voters seemed to take the situation good naturedly and understood that on account of the large number of voters voting in the precincts it would be necessarily delayed.

Q. The precinct that you have mentioned where about 1,200 were registered, can you give us any idea of how many voted that day, approximately?—A. I believe they cast over a thousand votes in that precinct.

Q. Cast over a thousand votes?—A. But I will say this, that in my experience in this office and as a voter, I have never seen six more rapid and more efficient judges of election and clerks of election than those men in that precinct. They spent a large amount of time days before the election planning how to conduct it and had devised a scheme which eliminated a great loss of time, especially in the numbering of the ballots. They had worked out a scheme of cards for the voters, having the voters write their names on cards which were mailed to the voters, I think the day before election, and, even with all of their swiftness, I think the election was necessarily very improperly conducted in that precinct. I do not belive that six men—four judges—could conduct an election in a precinct having that large number of voters in it with any degree of accuracy and observe the laws and the requirements of the law in the conduct of the election. There was certainly no opportunity to scrutinize the voters. They just took it for granted everybody in line was entitled to vote and they handed them a ballot and the judges didn't have time hardly to look up and see who the voter was. They did another unprecedented thing in that precinct, which if it was not done they would not probably have been able to have polled over 600 or 700 or 800 votes, and that was they illegally opened the ballot box the night before and initialed the ballots. That was something they had no right to do, but they were honest men and there was no evidence of fraud. We were personally acquainted with the judges in that precinct and they did the best they could possibly under the circumstances.

Q. How many voters do you believe, from your experience on the election board, can be handled by six judges and clerks?—A. Not over 250.

Q. Not over 250?—A. If they vote more than 250, or at least if they vote more than 300, and especially when they get up to 400, they can not, in my judgment, possibly conduct the election as it ought to be conducted. They rush the voters and that causes mistakes and they must rush themselves, and when they have a large number of ballots to count, after they have spent 14 hours in the polling place without an opportunity hardly to take time to eat, when they come to count the ballots they are worn out, and usually they are men, in many instances, up in years and are unfit for such a long mental and physical strain as the conducting of an election of this kind imposes upon them. The counting of 400 or 500 ballots, with 47 candidates on each ballot, and 6 party tickets, is an insuperable task for these men to perform after they have worked all day without an opportunity to sit down and rest for a few moments, or to do anything, except just standing there and hand out ballots and count and write names on the poll books.

Q. Judge, aren't there many precincts in the city where the registered number of voters have always been in the neighborhood of 500 or 600?—A. Some, but not generally. It is against the law to have such precincts as that. It is the wisdom of this State there should not be more than 300 voters to a precinct; our statute limits the number to 300 in each precinct, or as near as may be.

Q. But in those precincts where you have always had 500 or 600 or 700 voters registered, in the past, have you ever heard complaints that voters remained on the outside after closing time and were unable to vote?—A. We have that complaint in precincts where there are not more than 300 voters in it, because a great many voters will put off to the last minute going to the polls to vote and naturally there is congestion when they do that.

Q. Do you refer to this past election?—A. Previous elections. The polls are always crowded most in the early hours of the morning and in the late hours of the afternoon and evening; from 6 to 7 in the evening they have the biggest crowds at the polls.

Q. What percentage of the registered voters usually are voted?—A. I could not tell you that. I have never made any statistics on it. We have, I think, somewhere in the neighborhood of 325,000 or 330,000 voters registered at this election, and I believe they polled about 287,000 votes, or approximately 290,000.

Q. Which would indicate an average of running over 80 per cent all around that usually voted?—A. Yes. But some of the returns did not come in until two days after the election was held, when they ought to have been in here no later than 1 o'clock at night of the election night.

Q. Where are affidavits that are attached, or should be attached, to ballots voted by judges for illiterate voters held in this office?—A. They ought to be in the envelopes. We furnish the judges with a large envelope for rejected ballots and the affidavits of the illiterate voters would not be in the ballot boxes, but I do not recall that I ever examined any of the affidavits. I do not believe that the judges of election can be induced to conform to that requirement of the statute requiring the voter to make a written affidavit of his illiteracy. I do not recall whether the statute requires the affidavit to be in writing, but if it does there would be very few judges who would ever comply with it. They would merely swear the voter orally, and if he stated he could not read or write, they would vote his ballot for him. However, if there was any illiteracy affidavits written out and signed, they are in the files in this office.

Q. Judge, can you recall any statements made by you during the recount at any time regarding the fraudulent character of this past election, referring to the eleventh congressional district?—A. Fraudulent statements?

Q. I say, any statement made by you regarding the character of this last election, referring to the eleventh congressional district, either to Mr. Bogy or——A. I do not recall any. If you recall any, you might put the exact statement to me and ask me if I made it, and that might refresh my memory on it.

Q. Judge, see if you can recall this statement. On Saturday, the last Saturday before the recount was concluded—the recount, I believe, was concluded on Monday—the Saturday prior to that, can you recall a conversation with Mr. Bogy, the contestant, in which he asked you whether in your opinion, since the count had almost been concluded, you did not think the election in the eleventh district showed up to be very fraudulent; and do you recall saying you thought it was horrible to believe Leavenworth was staring some of these men in the face, but they who acted as judges and clerks would cover up these things pretty well?—A. I do not recall ever making such a statement to Mr. Bogy as that.

Q. Do you recall any similar statement? I may not have gotten the wording correct?—A. I do recall having a conversation with Mr. Bogy about the recount when we got through with it. I recall telling him, so far as the recount had proceeded, that his contest would not show that he had been defrauded—that the recount alone would not show he had been defrauded of the election, if he was defrauded of it. That recounts very, very seldom, if ever, showed prima facie evidences of fraud to any sufficient extent to change or alter the result. That has been my personal experience.

Q. Why is that?—A. Why is that?

Q. From your personal experience?—A. It is only a surmise of mine.

Q. I understand, but from what facts?—A. The surmise is this: It is based on the way the election is conducted under the law. If the judges would undertake to certify false returns without the ballots being in the box, their conviction would almost follow as a matter of course. That was just a mere statement of opinion. I have participated in election contests before I became a member of the board, and I recall one contest where a candidate was elected by 4 votes, and there were over a hundred thousand votes cast in the election, and the result of the recount was he did not lose a vote. On another election, for another office, the office of collector, a Democrat was elected by 87 votes, and I think his office was contested, and there was no change in the result. I have never seen a contest where the result was changed on a recount, except one, and that was the office of public administrator, conducted here in this office two years ago.

Q. Is that due to the fact sometimes that if any fraud is committed at the polls that can be covered by the judges and clerks, from your general experience?—A. You are asking for an opinion now.

Q. Yes, sir.—A. I would prefer to testify to facts rather than opinions.

Q. I thought maybe I could get your opinion.—A. Fraud, however, here, so far as my observation has been concerned, is not confined to any one political party.

Q. I did not mean to question the party as a whole.—A. I am speaking of this recount; you asked me about that. There have been a great many things developed in this recount which would show fraud to some sensible people, committed in favor of both contestant and contestee, but not in any appreciable or great extent, but the judges of election might come in and explain the discrepancies in the returns to the perfect satisfaction of the board.

Q. For the sake of the record, and in order that it may be clear, just what took place with reference to the several requests for photographs of ballots, I want to ask you when was the first time the request was made, since the conclusion of the recount, for the photographing of any of the ballots?—A. I think on Monday, a week ago, when the contest concluded, either you or Mr. Bauer or Mr. Bogy spoke to me about photographing ballots, and I told you then we would be perfectly willing to give you a photograph of any ballot that you thought showed a forgery and you had the number of it, and I asked you to furnish the other sides with the numbers of the ballots that you wanted photographed, so if they had any objections to urge against the taking of the photographs they might do so, and so far as I know you have not either done it or, if you have done it, the other side has not agreed to it. I do not know what has taken place on the outside of the room between counsel, and I think all of the members of the board have agreed on one proposition, and that is, if there are any specific ballots of which a mark had been made so as to identify the ballot, you could have a photograph of that ballot, and the office has been open to you since the recount closed.

Q. But the board has taken the position, or rather a majority of the board, that we could not furnish the numbers of the ballots, but requested photographing of 88 ballots, scratched in one precinct, being all of the scratched Republican ballots, and if we did furnish the number of the precinct and the number of the ward of those scratched ballots we could not photograph such ballots; is that correct?—A. The board has stated its position on that in this record here this morning, and we have taken the position it would not, and we have made an official record of our position on that by three members of the board voting against the proposition and one in favor of it, that you could not photograph any ballots unless you could identify the specific ballot that you desired to photograph.

Q. I will ask you whether the clerks and the judges conducting the recount were permitted to take the numbers of any ballots except those which in their opinion should be disputed ballots?—A. The instructions that we have here speak for themselves on that. We drafted a set of rules or instructions to the recount clerks and submitted them to the contestant and the contestee, and at first the tentative draft was not agreed to, but contestant made some objections and the rules were amended to meet his objections, and I do not recall whether contestee made any objections, but at any rate, after we had discussed the matter at length, a set of rules or instructions were agreed upon and submitted to the clerks and read to them, and the clerks were instructed by the board in these written instructions, and we did it orally, too; I recall instructing the judges orally if there was no dispute about the validity of any ballot recounted by them no record was to be made of that ballot.

Q. When you say no record should be made of that ballot you mean either by them or anyone else?—A. Except to count the vote either for or against the contestant.

Q. Was any record made of the number of the ballot?—A. No record was made of the number of the ballot.

Q. Either by them or any of the watchers?—A. Either by them or any of the watchers.

Q. And as to the question of what were disputed ballots the judges and clerks alone were to decide that and not any representatives or watchers or contestant or contestee; is that right?—A. Both contestant and contestee agreed in writing that the recount should be conducted according to that stipulation and that stipulation provided that the recount clerks, two of whom were Democrats and two were Republicans, and watched by a Democratic and Republican watcher, appointed by the contestant and contestee, should decide the question as to whether there was any dispute about the legality of a ballot.

Q. But neither the watchers of contestant or contestee, or their representatives, were to be taken into consideration in reference to determining what was a contested ballot?—A. That was a matter that was left to the recount clerks.

Q. Left alone to them?—A. Yes; the contestant was represented in the recount by two Republicans and the contestee by two Democrats. The Democrats were appointed by the two Democratic members of the board, and the two Republicans were appointed by the two Republican members.

Q. So as to have it in the record, the two Democratic members of the board are yourself and Mr. Lammert?—A. Yes, sir.

Q. And the two Republicans are Messrs. Buder and Dempsey?—A. Yes, sir; and, of course, our appointments were approved by the other side.

Q. Judge, when these several matters, such as stipulation or instructions, or, any other discussions, came up or any suggestion made by the board, did the contestant alone make corrections, or did the contestee also engage in such discussion?—A. In regard to what?

Q. In regard to the stipulation as offered.—A. The stipulation was suggested by the chairman of the board, and suggested for the purpose of facilitating the recount and the taking of the testimony. We are confronted here with a spring election, for which we must prepare, and we did not desire that the recount be going on while we were making preparations for the election, as we were compelled under the law to exclude all persons from the office who were not engaged in the contest, and the stipulation was voluntarily entered into by both sides upon a full discussion among the members of the board and contestant and contestee and their counsel, and there was no good reason, and we left it with both sides as to whether they desired the recount of the ballots to be conducted in that manner.

Cross-examination by Mr. HAWES:

Q. Judge Arnold, you are president of this board?—A. Chairman of the board.

Q. A former circuit judge of this city?—A. Yes, sir.

Q. The board is composed of four members appointed by the governor of the State and confirmed by the State senate?—A. Yes, sir.

Q. Two of the members are Democrats?—A. Yes, sir.

Q. And two Republicans?—A. Yes, sir. The two Democrats were appointed with the indorsement of the committee of the Democratic organization and the two Republicans were appointed, as I recollect it, upon the indorsement of the Republican organization.

Q. Mr. Dempsey, Mr. Buder, and yourself are lawyers?—A. Yes, sir.

Q. The conduct of the office is under the general supervision of two chief clerks, Mr. Claudius and Mr. Stansberry?—A. Yes, sir.

Q. How long has Mr. Claudius, the Republican chief clerk, been in the employ of the election commissioners?—A. I don't know; to my recollection, he has been here 20 years, and Mr. Stansberry practicaly the same length of time.

Q. I believe you stated that the clerks of the recount were divided equally between the Democrats and the Republicans and that the Republican commissioners selected the Republican clerks and the Democratic commissioners selected the Democratic clerks?—A. Yes, sir; the office force is bipartisan under the law.

Q. Referring to the stipulation entered into on the 11th day of this month, do you recall a statement made in the presence of the other commissioners, the contestant, contestee, and their attorneys, asking that contestant and his counsel reduce and place in writing the things that they wanted in this examination, this request made by you?—A. Yes, sir.

Q. Is it not a fact that they then proceeded to make oral statements of the things they desired in the contest, and that you, in the presence of the other three members of the board, suggested, to avoid confusion or dispute, that the matter be reduced to writing in the form of a stipulation?—A. Yes, sir. I can give you my recollection of that, if you would like to have it.

Q. State it in your own way.—A. The members of the board appeared here in response to the summons issued by the notary. We appeared here at 10 o'clock on the morning of the 11th of January and we assembled in this office and went into session. Contestant and his counsel and contestee and his counsel were present. The chairman of the board stated that we were present, in session, and asked the contestant and the contestee what their pleasure was and what they desired to have us do. Conversation ensued, and the chairman of the board stated that we did not know what information contestant desired to obtain in the recount. We had not had opportunity to read the grounds of his contest and knew nothing about what the issues were that were raised in his contest; that it was customary, and, in fact, it was the practice, in State contests when a recount was to be conducted for the circuit court having jurisdiction to order the board to recount the ballots on the office in contest and to extract from the records of the election certain specific facts and information; the information or the evidence desired was usually set out in the order to the board in detail and the board was advised fully beforehand exactly what we were expected to ascertain in the recount. I then suggested to the contestant and his counsel that it would be an interminable job, and one of great expense, if we had to go through the ballot boxes in the eleventh congressional district and make a record of every ballot contained in the boxes. The record would be required to show the party ticket voted by every voter, the initials, whether there were any, or whether there was one or two on the back of the ballot, or whether it was numbered, and show the scratched ballots, and how they were scratched, and the great mass of other detail usually called for in State contests, and this would require the clerks to take each ballot and to read the information to a stenographer, who would take it down as it was read in the presence of the recount clerk, and also with the right of the contestant's counsel to have written in the record any other information contained on the ballots that he might desire. It would also require a stenographic record of the poll books and the return, the condition of the ballot boxes, and the conditions of the poll books, whether the returns were properly signed by all of the officers, and whether the returns were properly made out, and the contents of the returns; and that would take a great length of time, and in order to avoid that expense and delay and to facilitate the matters, it had been our experience here that in nearly every election contest the question of disputed ballots was usually narrowed down to a very few. That fully 90 per cent of the record made of the ballots and returns were never disputed, and I suggested that we agree to eliminate, if it was satisfactory to the contestant and his counsel and contestee, the making of all record and omitting any record of any ballots about which there was no dispute. I first suggested that we leave the question as to the validity of the ballots and boxes to two Republicans and two Democrats, with the privilege or legal right to contestant and contestee to have their representatives present when the ballots were opened and counted. There was an objection by the contestant to that arrangement, that he did not like to leave the question of disputed ballots to the decision of the clerks of this office. I took the ground that the Democratic clerks and the Republican clerks were well versed in the election laws, nearly all of them had experience in contests, and they were all familiar with the requirements to the legality of ballots. Counsel, however, did not like to leave the decision of the legality of the ballots to the clerks; and I then suggested that if there was any dispute among the clerks as to the validity of any ballot that that ballot should be laid aside and placed in an envelope and a record made of the number of it, and the decision left to the board of election commissioners to decide the question as to its validity, meaning by that as to how it should be counted, whether for or against contestant, and that suggestion was approved and placed in the stipulation; and the stipulation was open for discussion, and was discussed at great length and a great many suggestions were made about what it should contain. Contestant and his counsel both agreed that it would be wise and proper to eliminate the making of any record of undisputed ballots. What they were after in their recount was to ascertain fraudulent ballots in the ballot boxes, and they were agreed that there would be no necessity of making a record of ballots which were concededly and admittedly legal ballots; and they signed the stipulation, both sides signed the stipulation, and we then drew up the instructions and proceeded with the recount of the ballots.

Q. Were your instructions submitted to contestant and his counsel before promulgation?—A. They were, and agreed to, and the form of the data was prepared by one of the clerks in the office, and that was submitted to contestant, and he agreed to that, and it was agreed that the form of data——

Q. The clerk that prepared this memorandum for the recount was, I believe, Miss Emma Bobb, a Republican clerk and stenographer for this board?—A. Yes, sir.

Q. The testimony that you are now giving, Judge, is in the presence of Mr. Lammert, Mr. Buder, and Mr. Dempsey?—A. Yes, sir.

Q. So that any inaccurate statement on your part can be corrected by them, if they so desire?—A. Yes; also in the presence of the contestant and his counsel.

Q. The gist of the agreement was that an equal number of Republican judges and clerks and an equal number of challengers should examine the recount and tabulate the votes cast in each precinct, and that where a dispute arose as to numbering, scratching, or other matters indicating irregularities or fraud, that such disputed ballots were to be placed in an envelope and then examined by the board. Is that substantially correct?—A. That is correct; also a record was to be made by the recount clerks of the disputed ballot. That is, the number of the ballot and the party ticket.

Q. Were all disputed ballots, as a matter of fact, placed in an envelope and then examined by the four members of the board in the presence of contestant, contestee, and counsel?—A. They were; and I think decision on nearly everyone of the disputed ballots made by the board was acquiesced in by the counsel for contestant and the contestant himself. There might have been a few instances.

Q. Under this ruling and instruction a Republican clerk, a Republican watcher, or the contestant or his counsel may have placed any single ballot in dispute in the envelope and brought it to the attention of the four members of this board for decision?

Mr. FEIGENBAUM. I object to that, because it is clearly contrary to the witness's testimony that anyone excepting the judges and clerks could have caused any ballot to be put in the disputed ballot envelope.

Mr. HAWES. I would like for the judge to refresh his memory on that subject.

A. That was my construction of the stipulation. As I construed the stipulation, two Republican counters and two Democratic counters were to decide the question as to whether a ballot was disputed. I do not recall any request made of the board by the contestant about having, however, the recount clerks make any record of any particular ballots. If they made any request of the board I don't recall it.

Q. If the contestant or contestant's counsel or a watcher in the employ of contestant had asked this board to set aside any ballot in dispute and put it in the envelope for disputed ballots, would that request have been granted by this board?

Mr. FEIGENBAUM. I object to that, because it is based on a hypothesis of which there is no evidence in the record.

A. I could not speak for the other members of the board, but I should have been disposed, if there was any genuine dispute about it—the board would have been very glad to entertain any challenges of the validity of the ballots that were not called for on the data.

Q. Judge, have you any knowledge of an agreement entitling contestant to have a watcher of his own selection at each table at which the recount was made?—A. I do not recall Mr. Bogy himself making any statement as to the number of watchers he desired, but I do recall distinctly stating, and it was agreed among the members of the board, that each side might have one watcher at each table.

Q. Selected by him?—A. Selected by him: selected by the contestant and contestee. I did hear discussed at some length that agreement. My understanding was on the morning the contest started each side were to have five, and I believe there were five watchers for each side.

Q. And the following day, in order to expedite the recount, and for the sole purpose of expediting the recount, the board put at work 12 crews, and each crew was subject to supervision by a watcher to be selected by contestant or contestee?—A. If they so desired. We started, I think, with 10 tables, and during the first day we added eleventh table, or the next day, and I think on the second or third day we added the twelfth.

Q. This was largely in response to the demand of contestant, to which contestee made no objection, that the recount should be made as rapidly as possible?—A. I think that was the agreement on all sides we should get rid of it as quickly as possible. I do not recall one specific conversation with Mr. Bogy on it.

Q. Do you remember whether there were two guards placed at each door?—A. There was one guard at each door.

Q. One Democrat and one Republican at each door?—A. No one was allowed in under the rules except those who were sworn to secrecy and were engaged in the contest.

Q. There were two guards in the vault?—A. There was a guard at the door of the vault and one or two clerks in the vault and one clerk carrying the ballot boxes from the vault across the hall to the office.

Q. One key to the vault is kept by the Republican chief clerk and another key to the vault is kept by the Democratic chief clerk?—A. That is right.

Q. The vault can not be opened unless both are present?—A. That is correct.

Q. In bringing out ballot boxes for recount, were there an equal number of Republicans and Democrats handling those boxes?—A. Yes; the Democrat and the Republican were in the vault; and when a box was called for the two clerks would go and get the box and the Republican clerk would deliver the box to the Democratic clerk, and the Democratic clerk would then take the box into the office.

Q. Are you aware that Mr. Bogy was permitted to enter the vault and examine the boxes that were not opened and make any comment that he desired on the condition of the boxes?—A. Not to my knowledge; I do not recall that.

Q. How many voting precincts were there in the city of St. Louis in the years 1916 and 1918?—A. In 1918 there were 500. I do not know how many there were here in 1916; 500 in 1918.

Q. How many in 1920?—A. Six hundred.

Q. How many voting precincts were there in the eleventh congressional district in 1916 and 1917?—A. I could not answer that question for you. There is 155 there now. I could furnish you that information.

Q. I wish you would examine the record and have it placed in the record.—A. There were 132 in 1916.

Q. And increased in 1920 to how many?—A. One hundred and fifty-five.

Q. That was a total increase in that district of only 23 voting precincts?—A. Yes, sir.

Q. What was the total registration in 1916 and 1918 in the eleventh congressional district, or either one of those years?—A. The total registration in 1916 was 44,670.

Q. What was the total registration in 1920?—A. Seventy-nine thousand three hundred and fifty-six.

Q. This shows an increase of approximately 35,000 registration in that district?—A. Approximately; yes, sir.

Q. As a matter of fact, the registration was practically doubled in the year 1920?—A. That is apparent from the figures.

Q. The total provision made by the board for these additional 35,000 registered voters was only 23 precincts?—A. That is all. The board made no provision, as I understand it, for the increase in registration due to the enfranchisement of the women. I mean by that they added no additional precincts. We did add 100 precincts in the city at large; that was barely more than enough to take care of the normal increase in the male vote. The board had reasons that were satisfactory to itself for not enlarging the voting precincts to take care of the women's vote. We did not know then whether they would have the right to vote when we redistricted the city, as that was done back in May; and the increase we did make in the number of voting precincts was based on the vote at the last presidential election—that was the election of 1916—as was required by the statute.

Q. So that the judges and clerks of election in this election, 1920, had twice the number of votes to count, record, and tabulate that they had ever had in any preceding election, according to your recollection, in the city of St. Louis? A. Almost twice as many.

Q. Were there delay all over the city of St. Louis because of this enormous increase in the vote?—A. There were.

Q. Can you give some illustrations of the time taken by judges and clerks of election in returning to this office the ballot boxes and returns and records?—A. Well, there were quite a number of precincts—just how many I don't recall—from which the judges did not deliver the returns at this office until after 6 o'clock the morning following the election. Also, if I remember, they did not deliver the boxes and returns until afternoon, and I think there was one or two instances where they did not bring the returns in until the second day after the election. The returns previously were usually all in—all of the returns from all of the precincts were usually in by 1.30 or 2 o'clock. The overwhelming mass of them were in before 12 o'clock. I do not speak for the presidential election, but speak for the general election of 1918 and the spring election and other elections that have been conducted, of course, all off-year elections are small, but the election of 1918 was quite a large vote, and I think we had four-fifths of the ballot boxes in by 12 o'clock.

Q. Hasn't it been roughly estimated that 127,000 women voters were added to this registration for this election?—A. I think that is substantially correct.

Q. There were 155 voting precincts in the eleventh congressional district; did you have any complaint made, or was complaint brought to the attention of other members of the board, relating to any disturbance of the peace, interference with voters, or irregularities other than in precinct 1 of the twentieth ward?—A. Yes; I think there were some complaints. I did not go over the police returns to this office to ascertain that matter, but I do not recall any serious disturbances at all anywhere in the city on election day. I heard about this one fight I have already related in the twentieth ward; but we had numerous complaints.

Q. Did they come from the eleventh congressional district or other portions of the city?—A. They came from everywhere. We anticipated a great deal of disorder at the polls on that day on account of the congestion which was likely to follow because of the women voting, and one of the common sources of disorder at the polls is congestion. Voters get tired and impatient waiting to vote, and get quarrelsome.

Q. How many special clerks were employed by this board to make the recount which has just been completed?—A. We had 12 tables and there were 4 men at each table, and there were 48, and we had probably 8 or 10 men engaged in other work than the recount, and all of the entire force of the office devoted its time to the recount.

Q. How many days did it occupy?—A. It started on the 12th and continued throughout the 13th, 14th, 15th, 16th, and 18th.

Q. Between what hours was the recount made?—A. The recount started at 9 o'clock in the morning of each day and continued until 12 o'clock at noon, and the men went out to lunch, and they returned at 1 and resumed work unitl 5, and took another hour off for dinner, and returned at 6, and resumed until 9 o'clock in the evening of each day.

Q. What was the compensation paid each clerk for this recount?—$6 a day for seven hours' work and $3 a day for the overtime.

Q. Making $9 a day for approximately 60 clerks for a period of five days. This sum, exceeding $3,000, is paid for by the city?—A. By the city.

Q. Did the contestant pay any proportion of this sum?

Mr. FEIGENBAUM. We object to that as being entirely immaterial.

A. We did not ask him to. He has not paid.

Q. Is there any legal way in which you can recover from contestant any proportion of this expense of over $3,000?

Mr. FEIGENBAUM. That is objected to as being immaterial and outside of the issues made.

A. I do not know how it could be done.

Q. Judge Arnold, I want to ask you if you were not summoned by Gov. Hyde, in company with Mr. Buder and Mr. Lammert and Mr. Dempsey, to make suggestions relative to changes in the present election laws of this State?

Mr. FEIGENBAUM. I object to that as immaterial. I do not see the materiality of that. That will not affect the present contest, unfortunately.

Mr. HAWES. I desire, Mr. Commissioner, to show by this question that there was no way that this election could be held than under the present laws of the State, and there was no method of providing for the increase of 127,000 women voters, and that the election commissioners believed that the election laws should be changed in many particulars, both as regards the primary and the general election.

Mr. FEIGENBAUM. We will readily concede that some change should be made, but we can not see how such changes will affect the present contest.

Mr. HAWES. I ask that my question be answered.

A. I received a letter from Gov. Hyde asking me to attend a conference of election officials from other cities in this State at Jefferson City, and I so understood the other commissioners did; at least we all went to Jefferson City together.

Q. Did you see the other commissioners present at Gov. Hyde's office in a conference on this subject?—A. Not at his office, but at the State capitol. We did not have any consultation with Gov. Hyde personally about the matter, but I assume that he had arranged the conference to take place among the election officials and others who were interested in promoting reforms in the election laws.

Q. And this board, and the individual members of the board, recommended a number of changes to the present primary law and election law?—A. Yes; at least I did.

Q. In conclusion, Judge Arnold, I want to ask whether you heard any complaints as to the fairness of this recount in any detail connected with the recount or tabulation until such objection was stated here to-day?—A. I did not. I will have to amend that statement now. Mr. Bogy complained to me about one detail where a mistake had been made in recounting the ballots in one precinct.

Q. What ward was it, do you remember?—A. I do not recall that; but it was one of the tables where they were recounting the ballots, and he told me that he did not like the way the men at that table were conducting the recount; that he had lost some votes there and they did not want to reopen the ballot boxes, but when they did reopen the ballot boxes and go over the ballots again they corrected the mistake, I think, showing that he had lost 30 votes, and I went over to the table and made inquiries about it, and discovered that they had made some errors in the first count of the ballots, which the clerks then—at least one of the Republican clerks at the table—told me that they had discovered the error themselves and had voluntarily reopened the box and recounted the ballots. Mr. Smith was at that table, and I asked him about it, and I asked him if there was any effort there to count Mr. Bogy out of any votes, and he said it was preposterous and was very much incensed with the idea he should be suspected even of an attempt to cheat in the count.

Q. There were at that table two Republicans and two Democrats and two watchers?—A. Yes, sir.

Q. Equally divided between Democrats and Republicans?—A. Yes, sir.

Maj. HAWES. I desire to introduce in the record a communication that I gave to the board. You remember this communication being read to the board.

Mr. FEIGENBAUM. I object to that letter as entirely immaterial. It is a letter between Maj. Hawes and his attorney and that has no bearing on this contest at all.

Maj. HAWES. This record has been admitted as a part of the record of this board. I now desire to have it inserted in these depositions.

Mr. FEIGENBAUM. Of course, whatever has gone into the official minutes of the election board I can not prevent, or could not prevent, but I do object to this letter going into these depositions as self-serving evidence.

Maj. HAWES. At the opening of the proceedings on the morning of January 11 I read to the board the following communication and requested that it be made a part of the official records of the board in its minutes. I now read:

To the honorable board of election commissioners, city of St. Louis.

GENTLEMEN: I do not desire to interpose any technical objections or cause any delay in the opening of ballot boxes and the counting of the ballots in the eleventh congressional district contest instituted by Mr. Bogy. Mr. Bogy waited until Saturday, December 18, at about 1.30 p. m., to file notice of contest. This was his last legal day for filing. On the following Monday afternoon, December 20, I delivered the answer. He has 40 days from that date in which to present evidence in support of the allegations in his notice of contest. I desire the contest to be thorough and to extend to every voting precinct. I therefore urge the election commissioners to expedite the recount, so that he will have opportunity to present all of his alleged evidence before the expiration of the time for such submission, subject to the competency, materiality, and relevancy of such testimony.

Yours, very truly,

HARRY B. HAWES.

Q. Do you remember my reading such a letter to the board?—A. Yes; our minutes contain that letter, as you have just read it; those are our minutes of January 11.

Maj. HAWES. Now, I request that the stipulation covering the manner of examination and recount, signed by contestant and counsel and contestee and counsel, be inserted in the record.

The WITNESS. We will give you a certified copy of the record.

Maj. HAWES. I want that in the record.

Said stipulation is in words and figures as follows:

STIPULATION.

ST. LOUIS, MO., *January 11, 1921.*

It is stipulated and agreed between contestant and contestee and their respective counsel that the board of election commissioners shall open the ballot boxes used in the eleventh congressional district in the election in contest and recount said ballots on the office of Representative in the Sixty-seventh Congress for the eleventh congressional district of Missouri, and shall certify the result of said recount showing the number of ballots cast and counted for the contestant and contestee on the respective ballots cast at said election, and the number of ballots cast for the contestant and contestee and rejected by the judges and clerks of election.

It is further stipulated and agreed that in case the validity of any ballot for either the contestant or contestee is challenged the question shall be decided by the board of election commissioners.

It is further stipulated and agreed that during the recount of said ballots no comparison shall be made of the ballots with the poll books: *Provided*, That this recount hereinabove provided for is to be taken during the time allowed for the contestant to present his evidence and shall not be charged to the time of the contestee: *Provided further*, That nothing in this stipulation shall preclude the contestee from making an examination of the ballots during the 40 days' time allowed to him by law: *Provided*, That the contestee does not waive any objections he may desire to make as to the competency, relevancy, or materiality of any testimony offered on behalf of the contestant or shown in the recount: *Provided*, That the contestant does not waive any objections he may desire to make as to the competency, relevancy, or materiality of any testimony offered on behalf of the contestee or shown in the recount.

It is further agreed and stipulated that all records made up or testimony taken in this case shall be in triplicate and each side shall be furnished true copies thereof as soon as transcribed or written and certified to by the notary taking depositions.

BERNARD P. BOGY, *Contestant.*
CORNELIUS F. BAUER,
Attorney for Contestant.
HARRY B. HAWES, *Contestee.*
CAMPBELL CUMMINGS,
PETER T. BARRETT,
Attorneys for Contestee.

Maj. HAWES. I now desire to have inserted in the record instructions delivered to the counters, which were first read and agreed to by contestant and his counsel.

[For instructions delivered to counters, see p. 271, Exhibit D.]

Mr. FEIGENBAUM. We agree, and are perfectly willing that the original, which I assume is on record in the office of the board of election commissioners, may be inserted, showing the instructions given, but we do not admit that such instructions were submitted first to contestant and agreed to by him.

Maj. HAWES. I will ask Judge Arnold if, in the presence of Mr. Dempsey, Mr. Buder, and Mr. Lammert, these instructions were not dictated, in the presence of the board, contestant and his counsel, read over and examined by them and specifically agreed to by Contestant Bogy and his counsel, Cornelius Bauer?

Mr. FEIGENBAUM. Unless that is personally known from the independent recollection of Judge Arnold, I will object to him answering that, and if there is any memorandum in the records that will appear.

Maj. HAWES. I ask that the chairman of the board state whether or not this is a fact.

A. Miss Bobb and I prepared the instructions to counters, and after the document was written up I brought it into the board room and, in the presence of the contestant and his counsel, Mr. Bauer, his then counsel, we read the instructions, and some objections were made to those, and I went back and had the instructions rewritten and brought back into the board, and we read them to Mr. Bogy—I read them to Mr. Bogy myself, standing in the door—and there were no objections made to the instructions then as they were completed, and they were signed by the board of election commissioners. There were 10 paragraphs, from 1 to 10.

Q. This agreement of Mr. Bogy and his counsel took place in the presence of Notary Grodzky, the four members of the board, the contestant's counsel, Mr. Cornelius Bauer, the contestee, and his two attorneys?—A. Yes, sir.

Mr. FEIGENBAUM. I object to that; and move that the answer be stricken out where the words "this agreement" are used. Judge Arnold has stated that there was no objection made when it was read and not that he expressly agreed to it.

Q. After discussions and changes were made, some of the suggested changes made by contestant and his counsel, a set of instructions were prepared under which the recount was made, and after such changes had been made is it not true that contestant and his counsel, in the presence of Notary Grodzky, the four members of the board, contestant's counsel, Cornelius Bauer, contestee, and his two attorneys, made no objection and agreed to the form of instructions?—A. That is my recollection of it. I read the instructions to the contestant and my recollection is I asked both sides if these instructions to the recount clerks were satisfactory, and there was some discussion there and some suggestions about changes in them, and I went back and made the changes and came back and reread them, and it was agreed by both sides that the recount should be conducted under those instructions. I then also asked Miss Bobb to prepare the forms of the data that the clerks were to take from the ballots, and she prepared that and I submitted the form to both sides, and I recall distinctly that Mr. Bogy made distinction that the form did not provide any statement to be made of ballots initialed with one initial and with no initials, and I handed the form back to Miss Bobb and she wrote at the bottom of it the suggestions made by Mr. Bogy and his counsel, and that form was also agreed upon.

Q. The recount did not proceed until after this form had been agreed upon and the written instructions had been read to the clerks making the recount?—A. That is correct, and each of the clerks was given a copy of the instructions, and they were also read to him, and each of them were given a copy of the instructions, and it was explained, and we gave the clerks blank forms on which they were to make their records.

Q. There are present, at the time this question is propounded, in this room Mr. Grodzki and the gentlemen I referred to in my previous questions?—A. Yes, sir.

Q. Listening to my questions and your answers?—A. Yes, sir.

Mr. Buder. Maj. Hawes stated if the commissioners present did not agree with the testimony of the chairman of the board they might note it at the conclusion of his examination. I did not understand that the stipulation prevented the watchers or either the contestant or contestee from examining the ballots and taking such data as they desired, nor did I know they were prevented from doing so at any time during the recount, and I did not understand the stipulation to prevent or deny them the photographs or a certified copy of any papers, and my understanding was while this stipulation was being drawn, if they were at any time dissatisfied with the work of any election clerks or election commissioners they would be entitled to photographs of the papers or ballots, whichever it may be.

Maj. Hawes. My understanding of that agreed with that of Mr. Buder, that contestant and contestant's counsel, or any watcher employed by contestant, could bring to the attention of this board any disputed ballot. That is my understanding of the thing, and as a matter of fact that was what was done.

Q. (By Maj. Hawes.) Judge Arnold, there seems to be a misunderstanding of your recent testimony as indicated by the statement made by Commissioner Buder. Was it not a fact that any recount clerk, any watcher, the contestant or contestee, or their counsel, could challenge any ballot during the recount and have such ballot brought before the board in an envelope marked "disputed ballots"?—A. That is what I said. My understanding of that is this, you have stated the thing as I recall it a little bit differently from the form you had it before. My understanding was that the recount of the ballots was to be left to the recount clerks. If there was any dispute between them as to the validity of the ballot, that dispute should be referred to the board. If they were unanimously agreed as to the validity of the ballot, they should make no record of that ballot. I never at any time stated that any watcher could not come to the board and complain that the recount clerks were not making a fair recount of the ballots. They had the privilege at all times to see the ballots as they were counted and to make any complaints or challenge any ballot that they thought these fellows were making mistakes in recounting, and not that particular objection. That is my recollection on that.

Mr. Barrett. You haven't got it yet.

Mr. Feigenbaum. This is an attempt, I think, to require Judge Arnold, who is a very intelligent witness—there is no question about that—to change his statement.

The Witness. I will not change my statement.

Mr. Feigenbaum. He has stated as clearly as he can what his understanding was.

Maj. Hawes. I will ask this question, so the matter may be clear: Did or did not the watchers appointed by Mr. Bogy and myself, and in addition Mr. Bogy and myself, and in addition our counsel, have the right to question each ballot as it was counted, and upon being questioned by them to have that ballot presented as a disputed ballot to the board?

A. They had the right to bring that before the board, but the clerks, however, were not instructed to make any record of any dispute that might be raised. What I was trying to do was to eliminate discussions at the table, and what I understood was the clerks were to settle the disputes; but there was no instructions given that the watchers could not complain to the board of the decisions of the clerks. Both sides had full liberty to come to the board and challenge the decision of those watchers on those matters.

Q. So there were six men equally divided at each table, and any one of the six men could bring to the attention of this board any ballot that was in dispute; is that correct?—A. That is correct. I think Mr. Bogy called my attention to a number of things during the contest—so did the attorneys for the contestee—about the way the recount was being conducted. There was never any disposition on my part or, as I understood it, on the part of any member of the board to foreclose contestee or contestant raising any question about the decision of the recount clerks; but we agreed that, so far as the clerks were concerned, when they agreed a ballot was a legal ballot they made no record of it; and if they agreed it was illegal, they should make a record of that and submit it to the board for decision.

Q. But the watcher for myself, or contestant himself, or contestant's attorney, could dispute the ruling of the two clerks and cause a ballot or a number of ballots to be brought before this board?—A. By complaining to the board, but not to the clerks.

Redirect examination by Mr. FEIGENBAUM:

Q. To clear this thing up, now, you say that any of the watchers of either of the parties, contestant or contestee, or their attorneys, could bring any matter before the board?—A. Yes, sir.

Q. Did I not correctly understand you to say that what was known as a disputed ballot was a ballot that was disputed by one of the judges or clerks; that is correct, isn't it?—A. That is correct, and that is in conformity with the stipulation.

Q. And that the instructions of the board to the clerks and judges were to the effect that no records were to be kept of any ballots or the numbers of any ballots other than disputed ballots?—A. Ballots which they could not agree on.

Q. Ballots that they could not agree on?—A. Disputed ballots.

Q. That is correct?—A. That is correct.

Q. And that no party or individual, either contestant, contestee, or their attorneys, had the right to take down the numbers of ballots except what was known as disputed ballots? Isn't that correct?—A. Yes; we instructed them to that effect. That was in perfect harmony with the stipulation, as we understood it. But that did not prevent, however, any clerk coming to us with any complaint.

Q. You gave us some figures regarding the registration in the eleventh congressional district for the years 1916 and 1920. Can you add to that the total votes cast for these two years in that district?—A. I could furnish you with that.

.Q Could you do that?—A. Do what?

Q. Add to that statement the number of votes cast for the years 1916 and 1920 in the eleventh congressional district?—A. Read that question.

Q. Will you give us the number of votes cast in the eleventh congressional district in the year 1916 for Congress?—A. 1916, Igoe received 23,928; Barthold, 17,534 in 1916; Long, 684; Spaiti, 41; prohibition, 9. Igoe was the Democrat; Barthold the Republican; Long, Socialist; and Spaiti, Socialist-Labor; prohibition had no candidate.

Q. That is approximately 42,000 votes?—A. Yes, sir.

Q. What were the votes cast for the year 1920 for the same office in the same district? Can you give us the total?—A. Hawes, 35,726; Bogy, 33,592; Long, Socialist, 1,774; Spaiti, Socialist-Labor, 189; Farmer-Workers, 452; Prohibition, 27.

Q. I want to ask you whether or not you recall in the twentieth ward, when the returns were received in this office, whether some of the precincts showed a larger number of votes cast than were actually registered on the books and whether such returns were not sent back for correction?—A. I do not recall that. That may have happened, but I do not recall it.

Q. Something was said about the vaults being closed. They were open all day during the recount?—A. Yes; with always the men on guard there.

Q. Did you ever learn from Mr. Bogy what his reason or excuse was for this delay you spoke of?—A. What delay?

Q. The delay in commencing and starting with the recount?

Mr. Barrett. I object to that.

A. I do not know that he ever stated it to me.

Q. A statement was read in the record by Maj. Hawes to this board?—A. Yes, sir.

Q. As to why this delay took place?—A. Yes, sir.

Q. Do you recall a statement by Mr. Bogy to the effect that the fact his attorney, Mr. George B. Webster, whom he had employed—he was waiting for him to arrive?—A. He may have said something in regard to that when he came in here that morning; I do not recall; I believe he did make some such statement, he was waiting on some lawyer.

Recross-examination by Mr. Hawes:

Q. How many attorneys are there in the city of St. Louis?—A. I do not know; over a thousand.

Q. Approximately?—A. Over a thousand; probably sixteen hundred.

Q. You are a lawyer; contestant could have taken depositions in this case at 25 different points if he had so desired?—A. I am not familiar with the practice in congressional contests on that. I did not know that. I heard that stated here the other day, I think, for the first time, and I could not state that of my own knowledge.

Q. Your records show that in 1918 Congressman Igoe had no opposition?—A. As a matter of fact, he did not have any opposition.

Q. No Republican opposition in that year?—A. No, sir.

Mr. Bernard P. Bogy. I want to make a statement.

Maj. Hawes. If the contestant in this case introduces any statement as to a fact relating to the course of this contest, I demand that he be first sworn, that I might have the right of cross-examinaion, the same as any other witness, and I object to any statement of facts by him unless it is as a witness under oath.

Mr. Feigenbaum. Statements were made continuously this morning by Maj. Hawes, all morning, as contestee, and I submit contestant, if he desires, may make a short statement.

Maj. Hawes. If it relates to a matter of fact I suggest he be sworn.

Mr. Bogy. It relates to a matter of fact that has already been brought up by Maj. Hawes.

Mr. Grodzki. Let him make his statement and you can object afterwards to his statement.

Mr. Bogy. In reference to the statement which has been introduced by Mr. Hawes into this record, that I delayed filing notice of contest until the last day, the 18th day of December, 1920, I wish to state that Maj. Hawes was fully acquainted with my reason for that delay, as we had discussed it a number of times. On the 13th day of December, after some number of consultations with Mr. George B. Webster, I retained Mr. Webster and gave him a retainer fee. He drew up——

Maj. Hawes. I object to this statement unless it is made under oath, so that I may have the opportunity to examine him as a witness as to whether this retainer was for the single and sole purpose of drawing a notice and as to whether it was a retainer to continue throughout the contest.

Mr. Feigenbaum. Let him make his statement. There have been so many statements made this morning, without objection.

Mr. Bogy. One of the reasons I was delayed was because of the fact that I was induced to go down to room 620 of the Jefferson Hotel, where Senator Reed was, Bennett Clark, Tom Sheahan, and a number of Democrats, who did everything in the world——

Maj. Hawes. I object to this testimony; it is a statement of fact, and I object to any statement of fact unless contestant will appear as a witness under oath and permit of cross-examination.

Mr. Feigenbaum. I insist Mr. Bogy is simply insisting on making a statement, because similar statements were made all morning.

Mr. Grodzki. Of course, if Maj. Hawes insists upon Mr. Bogy being sworn, he has the same right to ask that Maj. Hawes be sworn. It is a matter, I think, that Maj. Hawes should be given an opportunity to cross-examine him on.

Mr. Bogy. I was without an attorney, and I could not go ahead.

(Thereupon a recess was had until the hour of 3.30 o'clock p. m. of the same day, Jan. 25, 1921.)

Pursuant to the adjournment above noted, at 3.30 p. m. of Tuesday, January 25, 1921, the further taking of depositions was resumed at the office of the board of election commissioners of the city of St. Louis, and the following further proceedings were had, to wit:

Appearances: J. M. Feigenbaum, for the contestant; Campbell Cummings and Peter T. Barrett, for the contestee.

OSCAR E. BUDER, a witness of lawful age, being produced, sworn, and examined on the part of the contestant, deposeth and saith:

Direct examination by Mr. FEIGENBAUM:

Q. Will you please state your name?—A. Oscar E. Buder.

Q. Mr. Buder, you are one of the election commissioners of the city of St. Louis?—A. I am.

Q. How long have you been a member of the board of election commissioners of the city of St. Louis?—A. This is my second term. I was commissioned for a period of four years, besides this last appointment, which is about to expire, making it practically eight years.

Q. In point of time you are the senior member of this board? In point of time of service you have served longer as a member of the election board than any other member?—A. I think so.

Q. This is the conclusion of the eighth year of your service as a member of the board of election commissioners?—A. Yes, sir.

Q. Where you present, Mr. Buder, on the 11th or 12th of the month, when the first discussion came up in this office before your board regarding the recount of the Bogy-Hawes contest?—A. I was——

Q. I refer now to the time——A. I was during the greater portion of it. I would step out now and then. I believe I left a little bit before the conclusion of it.

Q. Will you give us, in your own language, the proceedings before your board immediately prior to the signing of a stipulation that has been referred to several times this morning in your presence?—A. Well, I do not know when that stipulation was signed. I left before the conclusion of that first session, but I can give you what——

Q. The substance of what took place?—A. The early part of it?

Q. Yes.—A. The parties appeared and said, "Well, what are you going to do?" I said, "We are ready to proceed with this count," and a discussion came up, How shall we proceed? And we told them what the usual method was of proceeding, and thereupon Judge Arnold said usually these things are under an order of the circuit court, and are not congressional contests and procedures, as far as he knew, or as far as his experience in the matter was concerned, were usually pursuant to an order of the court and specifically specifying what we were to do, and he asked Mr. Bogy what he wanted, and he said he wanted the ballot counted.

Q. What else did he say, Mr. Bogy?—A. Well, thereupon, some discussion took place—just who said it or who was the author of the statement, I do not know—but a discussion took place whether he wanted simply the ballots counted or wanted any other record, and they were discussing these matters at the time Judge Arnold suggested that they stipulate, so as to facilitate and expedite matters, just what was to be done. Or prior to that he intimated to or stated to Mr. Bogy that he would like to have him put in writing just what he wanted the board to do. As far as I recollect, Mr. Bogy said, "Well, all I want is a count in this matter," and thereupon Judge Arnold said, "Well, if that is what you want that will simplify matters," and he suggested that they enter into a stipulation as to the manner of counting these ballots. And then I left before that stipulation was drawn up. I do not know whether that stipulation was drawn up that same afternoon, but the next morning Mr. Bogy's signature was to a stipulation and also Maj. Hawes's.

Q. Do you recall statements of Mr. Bogy regarding the taking of photographs of scratched ballots?—A. That occurred on the second day. I recall that very distinctly.

Q. That is the day when the stipulation had already been signed?—A. Yes.

Q. You refer to the stipulation as having appeared to have been signed on the morning of the next day when you returned?—A. It was signed. I do not know when it was signed, whether it was signed that same morning or the day before.

Q. And it was that day that the discussion came up regarding the photographs?—A. Not with reference to the stipulation. They were mapping out instructions to give to the clerks of this board, the assistants, and there was some objection made to those instructions by Mr. Bogy and Mr. Bauer, his attorney, and they were rewritten: and when they were rewritten a discussion came up again, and I believe I raised the first question, that the instructions were not full or complete, and they were then changed or amended to put in "if numbered" to cover the objection which I made, concluding what was then item 7, I think item 7 of the instructions to counters, which read, "Ballots with no initials or with only one initial on the back thereof shall be counted as legal ballots." I objected to that and stated that these ballots may not be numbered, under that instruction, and counted by our clerk, and that there should be no mistake, but all ballots had to be numbered; to be legal ballots the words "if numbered" should be added to that seventh item.

Mr. Barrett. Oscar, do you recollect my making a single suggestion?

A. I believe you, too, agreed with me on that.

Mr. Feigenbaum. Mr. Buder, you said this discussion regarding photographing of the ballots came up about the time the instructions were drafted?

A. Yes, sir. The question came up then how scratched ballots would be counted, with reference to scratched ballots. He then stated all he was interested in was to get the ballots cast for him, whether scratched or not, counted for him, and the ballots which were scratched and voted for Hawes be counted for Hawes; and they all agreed to that, that that was all they wanted. And then Mr. Bauer went on and stated, "Now, there may be some other matters that we want, and we may not agree with your clerks." Thereupon Judge Arnold stated, "Well, if that is the case you simply have that noted, and the board will pass on those matters by having those ballots passed up to the board" Mr. Bauer objecting to the clerks of this office passing upon certain questions which might be raised by the attorneys for either contestant or contestee, and that I think resulted in these ballots being passed to the board for its conclusion in the matter. Then, I think Mr. Bauer further raised the objection that they might not be satisfied with the action of this board, and it was stated that he should have photographs taken of anything that he was not satisfied with, done by our clerks or by the board, if it was with reference to ballots or any other paper in this office.

Q. Nothing was said, then, when Judge Arnold told Mr. Bauer that photographs could be taken of any ballots he desired if the action of the board or clerks was unsatisfactory to him; nothing was said then as to identifying each particular ballot by number that he wanted a photograph of taken, was there?—A. Not while I was present; no. In other words, it was put that way, "If you are not satisfied with the action of the assistants or with our action, you can take the matter up by photographing"——

Q. Photographing anything you please?—A. Or a description of the matter, as to those matters that they were not satisfied with.

Q. And that was at the time, or the same time, that the instructions to the various clerks were drafted?—A. Well, they had already been drafted, but we were discussing the propriety of them, and also a sheet—I don't know what we can call it——

Mr. Cummings. Data sheet.

A. A data sheet, intended to cover all cases of ballots with no initials on, with no number, and with one initial, etc.

Mr. Feigenbaum. But it was prior to the instructions being sent out to the clerks?

A. Yes.

Q. And it was before the recount was started by the clerks?—A. Yes.

Q. Was it your understanding at the time, Mr. Buder, that that statement by the chairman of the board would authorize Mr. Bogy in calling for photographs, or having a photograph of any ballot that he saw fit?—A. I thought so; yes. And, further, that they were to examine, to have a right to examine, all ballots as the count went on to see whether they had any objections to them, or wanted anying of that sort.

Q. Irrespective of the action of the clerks?—A. Yes.

Q. You heard the testimony of Judge Arnold this morning referring to disputed ballots, Mr Buder?—A. Yes, sir.

Q. Now, was it your understanding that no photographs could be taken of any ballot except a disputed ballot, as it was described by Judge Arnold to be, a ballot which was not disputed by any of the clerks or which was disputed by any of the clerks or judges?—A. No. I assumed from what took place, and that was my understanding, that you were not cut off by the conclusion of the clerks on any matter, and their judgment in the matter was not to prevent you from having a description of that ballot or a photograph of that ballot.

Q. And it was your understanding that if the clerks refused to let the watcher or contestant see these ballots, or see the numbers of the ballots, that contestant could still come before this board and request the photographing of any ballots that were in a particular precinct?—A. It was my understanding that you could examine them and make such use of them, and have these photoed, if you desired them. But I do believe that if you had been deprived of any of the rights, the matter ought to have been brought before the board, and it was not brought before the board at any time that I know of, or before me individually that you were deprived of getting this data or having a right to examine the ballots. I mean when I say you, I mean Mr. Bogy or his attorneys, or either Mr. Hawes or his attorneys, if they had been deprived of the right to examine a ballot?

Q. Mr. Buder, were you present when Mr. Dempsey, one of the commissioners, made the statement to the clerks, out in the hall, when one of the clerks called attention to three ballots where the name of Mr. Hawes was written in and appeared to be the identical handwriting, were you present when Mr. Dempsey made the statements to all the clerks that in the future they cease keeping any track of scratched ballots, and that where such ballots were not disputed by the clerks and judges themselves that no one examine them or be permitted to examine them?—A. I heard no such statement.

Q. If such a statement was made it would not be in line with the understanding of yourself as to what the rights of the parties were?—A. It would not be.

Q. Mr. Buder, no meetings of the board were held from the time of the drafting of these instructions, or the commencement of the recount, until the last day, which took place on Monday; isn't that correct? No official meeting of the board as such?—A. Oh, we had a meeting the very first day.

Q. The first day?—A. Yes; and the second day.

Q. You did?—A. Yes.

Q. On the 12th; that was the second day; was that before the recount was started? I refer to the time, the five-day period that the recount was being conducted; not the day when they first appeared in the office?—A. They started the first day to count, didn't they?

Mr. Bogy. They started on the 12th, Mr. Buder, about 11 o'clock.

Mr. Buder. I think that is right. They started the next day to count.

Mr. Feigenbaum. The next day?

A. Yes; because at that time this other matter took place that I referred to.

Q. And from that time until the last day of the recount, which took place on last Monday, a week ago last Monday, was there any meeting of the board of election commissioners held?—A. Oh, yes; there were some meetings in between that time.

Q. You think there were?—A. Yes.

Q. Now, Mr. Buder, going back to November 2, 1920, the day of this general election, do you recall receiving some request from voters in the twentieth ward in the eleventh congressional district, to come down and remedy the delay in voting in some of the precincts?—A. I only recall one precinct now that was in the eleventh congressional district, and that was the one out on Franklin Avenue, near Grand Avenue. There were others throughout the city, but I can not identify them as being in the eleventh district. In fact, I know many of them were not in the eleventh district, from the fact that they were in south St. Louis.

Q. But you recall that instance in that precinct at Grand and Franklin?—A. Yes.

Q. Did you investigate that personally?—A. I was out there twice, both times with some other commissioner or two commissioners. I think one trip was made by Mr. Dempsey and Mr. Lammert and myself.

Q. And what conditions did you find there in reference to delays in voting?—A. Well, we found a string of people, I should judge about 50 to 75 feet long, and rather a slow procedure in the cast of the votes. We went indoors and saw the judges and clerks and found that some of them were slow, and told them that they had to get down to a better system and expedite matters.

Q. Do you recall any statement being made by them or of seeing any Democratic workers in there arguing with the judges and clerks and challenging many voters?—A. There were—now, when you say Democratic workers, I don't know whether they were Democrats or Republicans, but there were some precinct workers in that polling place, and we just simply told them that they must keep their mouths shut; that this matter was to be conducted by the judges, and they were responsible for what happened there, and we further instructed the police and the judges there that if any interference with the performance of their duty took place any more by outsiders, they should order the police to evict them or eject them from the place.

Q. You did not identify these men at that time as being Democratic workers or Republican workers, you say?—A. No; I can not say which they were; that is, in that particular precinct. I know in some of the other precincts, where I happened to know the precinct workers, but in that particular precinct I do not recall who they were.

Q. Do you know the Democratic committeeman of the twentieth ward, Mr. Gallagher? Do you recall seeing him in there?—A. I don't remember. In fact, I do not know Mr. Gallagher, excepting that I know there is a person like that. In fact, I would not know him if he stepped in this door right now. The fifth ward is not in this at all, is it, in the eleventh congressional district?

Q. No; the fourth is.—A. No. There was only one other trouble up north that I recall specifically, and that was in the fifth ward, just north of Franklin Avenue, on Thirteenth Street. I think we did go to a number of places throughout the city, but I can not recall just where without having these records now, which were nothing but memoranda of our clerk taken over the telephone and put on the file there, with the hour that the complaint was received, and then checked up by the commissioners; and in some instances the things were not of any importance, and our clerks would go out and take care of them, and others, we considered them of sufficient importance for the board, or the majority of the board, to go out on.

Mr. Feigenbaum. I think that is all.

Cross-examination by Maj. Hawes:

Q. Mr. Buder, you heard the testimony of Judge Arnold this morning?—A. Yes, sir.

Q. Is there any disagreement or anything in his testimony that you do not agree with?

Mr. Feigenbaum. I object to that question as being too general.

Maj. Hawes. I am trying to save time.

The Witness. I think I stated this morning, more or less, wherein I did not agree with him, and probably with this further exception, that Judge Arnold did not go out with the board, to my knowledge, on election day, on any of these calls, but remained in the office here. He may have gone out on his own accord, or with one of the other commissioners, which I do not know of.

Q. Are you clear, Mr. Buder, in your recollection that the agreement was construed so as to permit contestant, contestee, or their counsel or watchers at any of the tables to direct attention to any ballot about which there was a dispute, and such disputed ballot was to be brought to the attention of the board—A. That they had that right; yes.

Q. Do you remember that disputed ballots were brought to the attention of the board, examined by the board, and passed upon by the board?—A. Yes. Originally all duplicate or triplicate ballots were to be brought to the board irrespective of any request on the part of anyone. That was included in the direction of the board, and after we had proceeded in passing on these duplicates and triplicates the direction to our assistants and clerks who were making the count was changed so as to have them pass upon duplicates and triplicates when in the aggregate there were not any more ballots in the box than shown to have been cast, according to the poll book of that precinct.

Q. That was done to save time and by general agreement?—A. Yes, sir.

Q. Ballots in which there was a dispute as to the intent of the voter, or where the name was improperly written, as, for instance, the one "Her Hosse," and other ballots were examined by the board and counted either for contestant, contestee, or rejected entirely?—A. Yes.

Q. It was the theory that beginning with the first ward of the district, or the second ward, that as the count proceeded the different clerks or watchers or their attorneys, had the privilege of making objections during the count, and certifying the objection to the board either during the count, or at the conclusion of the count?—A. That is correct; yes, sir.

Q. The board was in session at various times between January 11 and the conclusion of the count on the following Monday morning at noon?—A. Yes;

they were, and had started out intending to have daily sessions here in the mornings to pass upon these disputed matters as they came up daily.

Q. On the morning of the 11th when this stipulation was entered into, you left the board early?—A. Yes. I had to go to court.

Q. You left before the conclusion of the discussion with reference to the stipulation?—A. Well, it was discussed considerably before I left, but nothing definitely concluded upon in the way of a stipulation put in writing and signed by the parties.

Q. The following morning, January 12, you saw the stipulation signed by contestant, contestee, and the various counsel?—A. Yes, sir.

Q. Did, at that time or any time after that, contestant or his counsel ask that this stipulation be changed?—A. Some argument arose after several days with reference to whether or not Mr. Bogy understood that stipulation, but I have no recollection of its being changed, or that any agreement as to a change was arrived at.

Q. Now, can I help you refresh your recollection by asking you if this was not on Saturday, or on Monday, the day of the completion of the recount?—A. It was either Saturday or Friday; it was not on Monday. I think it was Saturday that that matter arose, very near the completion of the count.

Q. By Saturday there had been a complete recount——A. Because I recollect we thought we would be through with the recount before noon on that day, or if not by that time, if we had continued Saturday afternoon we would finish up by night, but we concluded to adjourn over until Monday and not work Saturday afternoon—or not work Sunday. We worked Saturday afternoon, but we did not work Sunday; that is it.

Q. At this time, Saturday, to the best of your recollection, there had been a complete recount of the second ward, the third ward, the eighteenth ward, the nineteenth ward, the twentieth ward, and the twenty-first ward?—A. I would not know how much of it would be completed, but the record will show what was completed on those prior days. I kept no check on how much had been completed.

Q. To the best of your recollection all the wards were completed on Saturday night excepting the twenty-seventh ward; is that correct?—A. I think only one ward remained on Saturday night to be finished, and the question was whether we would remain in session and finish that on Sunday, and I called up Mr. Dempsey over the phone, and he and I agreed that an adjournment should take place until Monday to finish it up.

Q. So that if any discussion came up it must have related to things that happened in the twenty-sixth or twenty-seventh ward, possibly the twenty-second?—A. If those were the wards that were handled on Saturday and Monday; yes.

Q. And you, prior to that time, had heard no discussion about a variance of the stipulation, the manner of counting or recounting—— A. No. Prior to that time I heard no complaint of any kind with reference to the methods of procedure or the deference shown counsel or watchers by our clerks, with reference to requests, or as to the method that were counting. In fact, I did not hear it at that time, excepting that I heard some discussion between Bogy, which was not before the board, between Bogy and some of you that he did not understand that stipulation, and I did not charge myself specially with that argument, because I thought it was none of my concern.

Q. So that if the records show at that time all the wards had been counted but the twenty-sixth and twenty-seventh wards, it shows that seven out of the nine wards had been completed before any contention was attracted to your attention?—A. That is correct; yes, sir.

Q. Do you know, Mr. Buder, whether or not one of the commissioners, or two of the commissioners, were continuously present during the recount?—A. Well, we endeavor to have at least one commissioner present at all times, or two commissioners, and the other subject to call at any time; but whether or not they were here I do not know because I was not here the entire period myself.

Q. When the board was not in session and a dispute arose had you not arranged with the secretary of the board, Miss Bobb, to assemble the full board to discuss such dispute?—A. Well, we had not specifically arranged it, but that is the custom of this office that no member assumes the responsibility of passing upon any matter touching the orders of the board without submitting it to the board.

Q. The manner of recount and the instructions relating to the recount therefore could not have been changed by any individual member of the board without first having received the approbation of the entire board?—A. Why, I think that would follow as a matter of law, that the board not having directed it, any such action, if they did attempt it, would be contrary to the ruling or action of the board.

Q. If the contestant or the contestee or their counsel had desired a meeting of the board to pass upon any matter in dispute, would the board have met promptly to pass upon such question?

Mr. FEIGENBAUM. I will object to that for the reason that this is calling for the view or opinion of one member of the board, and Mr. Buder has already stated that they endeavored to have one or two members of the board present at all times, and of course, when he was not present he can not say what the opinion would be of those present members.

Maj. HAWES. I ask that the question be reread and that the witness answer it.

(Last question read, as follows: "If the contestant or the contestee or their counsel had desired a meeting of the board to pass upon any matter in dispute, would the board have met promptly to pass upon such question?")

A. I answer "yes" to that.

Q. Were you present when contestee, through his counsel, requested that the recount continue during Sunday in order to save time and expedite the recount?—A. No; I was not present, but I was consulted over the phone with reference to that by one of the contestants; that is, by one of the parties to the contest, and then I in turn called up Mr. Dempsey.

Q. Do you know, as a matter of fact, whether the contestant did not object to the recount continuing on Sunday?—A. The contestant, yes; I know that.

Q. And that contestee, through his counsel, desired the count to go on on Sunday?—A. I do not know that.

Q. Who was it that discussed this matter with you, Mr. Buder, on the phone?—A. Mr. Bogy called me up Saturday afternoon. I was at my office, and I told him I would be up in about 15 or 20 minutes.

Q. What did he say to you on the phone?—A. He says that the board had intended to continue this count on Sunday, and that that was not his understanding, and he was not prepared to go ahead, and did not want the count to go ahead on Sunday. I told him over the phone that I did not understand that we would count on Sunday, and I would get in touch with Mr. Dempsey.

Q. Did he convey the impression to you that contestant's counsel were insisting upon going ahead on Sunday?—A. No. His statement to me was that the board intended and would go ahead on Sunday, and I told him I knew of no such action on the part of the board, and I would get in touch with the other members, and he told me that Mr. Dempsey was up here at the time and had ordered that the contest go ahead on Sunday—that is, the count—and I told him, "Well, I don't think anything like that will happen, because I don't know of any board action requiring it to be done, and I do not see any necessity of it, and I will get in touch with Mr. Dempsey." And I did get in touch with Mr. Dempsey, which resulted in the adjournment from Saturday night until Monday morning. I got up there a little bit later, and found Mr. Dempsey and Judge Arnold up here, but the others had gone to their evening meal; that is, our assistants, and more or less the attorneys and their watchers. There was no one else here but members of our board.

Q. The communication from Mr. Bogy was in the nature of an objection to the count continuing on Sunday, was it not?—A. I would say so; yes.

Q. Was it your understanding that contestant, contestee, or their counsel or their watchers could question any ballot that was cast and bring any ballot before this board for discussion as to whether it was a proper ballot or not?—A. That was my understanding, absolutely.

Q. When would you say that the proper time was to have made such request of the board, during the count of that particular precinct, or immediately upon the close of that particular precinct?—A. Well, I would not want to say just when the proper time would have been, but I know we abandoned ourselves the idea of trying to clean these up daily as they went on—the board did.

Q. After a recount of any precinct are not the ballots, records, etc., replaced in a box and sealed up immediately after the recount?—A. Yes; with the exception of the ballots that were put into the envelope for the board to pass on.

Q. Then the proper way and the quick way to have made an objection was to have done it during the recount or after the recount had been completed, but prior to the time of the sealing up of the ballots and records in the particular box from the polling place?—A. Well, no. These boxes were to be sealed up immediately, and our practice has been here to note on the boxes, even when the commissioners open them up, that the commissioners had opened them up; and if it is opened once or twice or three times, that is noted on the box how often that box has been opened and who opened it and was responsible for the ballots while it was open.

Mr. BARRETT. Read the question, please.

(Last question read, as follows:)

"Then the proper way and the quick way to have made an objection was to have done it during the recount or after the recount had been completed, but prior to the time of the sealing up of the ballots and records in the particular box from the polling place?"

Mr. FEIGENBAUM. I object to that as being an expression of the opinion of the contestee and not a proper question.

A. That probably would be the most expeditious way, but the board was not in session here at all times, and we had them reserve those ballots for us to pass on, but they were to close and seal that box, with the exception of such ballots as were held for us, and they were to be kept in a sealed envelope, and also locked in the vault, together with the other ballots, which were put back into what we commonly term a ballot box. The instructions were that whenever we concluded with any precinct to seal those boxes with a seal especially provided by us.

Maj. HAWES. In case any ballot was challenged the ballot itself was to be produced for the inspection of the board; was that your understanding?

A. That was my understanding; yes.

Maj. HAWES. That is all.

Redirect examination by Mr. FEIGENBAUM:

Q. In the event that a ballot was challenged by a watcher for contestant or contestee and the judges and clerks in charge of that particular precinct, or the recounting of that particular precinct refused to hold it out and proceeded to seal the ballot box, such action by the judges or clerks would be contrary to your understanding of what they were to do?—A. Absolutely.

Mr. BARRETT. Just a minute. In the question you used the words "judges and clerks."

Mr. FEIGENBAUM. I am referring to the judges and clerks of the office.

Mr. BARRETT. You mean the assistants to the election commissioners?

Mr. FEIGENBAUM. Yes; the ones appointed by the commissioners for the recount.

Q. Now, Mr. Buder, you have told us in answer to several questions that Mr. Hawes asked as to what should have been done. You were not here during the greater part of the recount and don't know whether those instructions were or were not carried out correctly, do you?—A. I don't know whether——

Q. Of your own personal knowledge?—A. During the count I received no complaint that they were not.

Q. Now, any meeting that the board held during the recount would be shown by the minutes of the board?—A. That is correct.

Q. Have you any personal information regarding some of the ballot boxes having been opened while in the vault?—A. No.

Q. Was that called to your attention?—A. No.

Q. Do you recall whether or not Mr. Bogy, when he called you Saturday morning or Saturday noon——A. It was Saturday afternoon.

Q. ——Saturday afternoon to advise you that it seemed to have been the intent of the board to hold the clerks over through Sunday, can you recall whether the reason for his objection was that he feared the conducting of a recount on Sunday might be open to the question of illegality?—A. I do not recall that. My recollection is clear, however, that he stated that that was contrary to what he understood the procedure would be, that they would not stay on Sunday, and I told him I did not know of any action of the board taken to the effect that they would stay on Sunday, and that I would take the matter up with Mr. Dempsey, who was at that time the only member up here.

Q. Now, in passing on disputed ballots before the board when you met, were any ballots other than those placed in the envelopes by the judges and clerks and noted as disputed ballots brought before you?—A. I don't know that.

Q. You are not aware of any that did come before you?—A. I know we passed on all the ballots that came before us.

Q. You passed on all the ballots that came before you?—A. Yes; but what started that ballot on its way to the board I do not know.

Mr. FEIGENBAUM. That is all.

Recross examination by Mr. BARRETT:

Q. During the course of this recount Charley Claudius, the Republican chief clerk, and John Stansbury, the Democratic chief clerk, were present throughout the entire time, taking their meals even in the room?—A. That is correct, and they were not to leave this room at any time until everything was cleaned up and locked up in the vault.

Mr. BARRETT. That is all.

Mr. FEIGENBAUM. That is all I want to ask.

Maj. HAWES. During the absence of Commissioner Dempsey a question was propounded to the last witness regarding some testimony, or dispute, in which Commissioner Dempsey's name was used. The commissioner is now here——

Mr. FEIGENBAUM. I object to that.

Maj. HAWES. And in fairness to the commissioner——

Mr. FEIGENBAUM. I object to him proceeding with that statement at this time.

Maj. HAWES. And he should now be placed upon the stand to answer any question direct for himself.

Mr. FEIGENBAUM. Mr. Notary, I want a ruling at this time as to whether or not this ought to be completely stricken out of the record, because it is a statement, and it is a similar statement to the one that contestee objected to being made by Mr. Bogy this morning; and I ask the commissioner to order that stricken out of the record unless Maj. Hawes will make that statement under oath as a witness. I want a ruling from the notary on that. I want a ruling from the notary to have this stricken out of the record unless he will compel Maj. Hawes to take oath and make that statement as a witness. I want a ruling on that.

Maj. HAWES. In answer to the objection of counsel I desire to state that I have not placed in the record any testimony whatever; that my statement is calling attention to the fact that Commissioner Dempsey is present, and asking that the question propounded in an indirect way to the other commissioner be now propounded to him direct.

Mr. FEIGENBAUM. Now, Mr. Notary, we want a ruling on that. We ask that all these statements made by Maj. Hawes be stricken from the record, or else that we be accorded the right to make our statements unmolested in the same manner. We feel that we are entitled to the same rights to make statements that contestee has.

The NOTARY. I do not know, gentlemen, whether I have the power to exclude any matter or not. I think that the counsel has a right to interrogate Mr. Dempsey, or refer to the testimony regarding Mr. Dempsey, and repeat such statements. But whether I have any right to strike that from the record or not I do not know.

Mr. BUDER. You have a right to rule on it, but it goes in the record.

Mr. FEIGENBAUM. Then I want to have the notary to rule whether or not he has authority to have Maj. Hawes sworn and make these statements under oath, so they may appear as statements made under oath.

Maj. HAWES. I am not testifying.

Mr. FEIGENBAUM. The same argument was made this morning, or an argument was attempted to be made by Mr. Bogy, and it was ruled that he could not proceed.

The NOTARY. Well, if you want Maj. Hawes sworn, then he will have the opportunity to have Mr. Bogy sworn on his statement.

Mr. FEIGENBAUM. Mr. Bogy did not complete his statement.

Mr. BARRETT. If you will permit me, I would like to ask Mr. Buder a question.

Mr. FEIGENBAUM. I want it shown at this time whether or not we are being accorded the same privileges.

The NOTARY. Mr. Feigenbaum, in regard to your asking me to strike that from the record, I think Maj. Hawes should refer to some testimony given by Commissioner Buder as to the matter in question which occurred when Mr. Dempsey was present. I think that can be referred to by looking into the record as to what he stated at that time with reference to Mr. Dempsey. I think the matter ought to remain of record, and I do not see that I have any authority to either rule it out or leave it stay in. I think I will leave the matter stay in the record and let the committee in Congress rule it out or leave it in.

Mr. Feigenbaum. Then I ask that Mr. Bogy be given an opportunity to make a statement referring also to some evidence in the record this morning, without being sworn.

Maj. Hawes. I desire to state that I am perfectly willing to be sworn at any time.

(Thereupon Maj. Harry B. Hawes was duly sworn as a witness in this cause by the notary, but was not examined at this time.)

Mr. Barrett. Mr. Buder, your Republican associate commissioner on the board, Mr. Vincent Dempsey, is now present in this room?

A. He is.

Q. At the table?—A. Yes, sir.

Q. And he was present throughout the taking of your deposition by the contestant—he was here part of the time?—A. He came in while I was being examined.

Q. The contestant asked you some questions as to conversations between Commissioner Dempsey and yourself?—A. No; not to my recollection.

Q. Or as to instructions given to the assistant election commissioners by Mr. Dempsey?—A. As to conversations which took place between him and some assistants or watchers; I do not know which it was now.

Q. Who made that statement to you?—A. I was asked by Mr. Feigenbaum whether I was present at a conversation which took place between Mr. Dempsey and some of our clerks, to which I answered "No."

Q. You were also asked as to a conversation over the telephone between Mr. Bogy and yourself in which Mr. Dempsey's name was mentioned, too?—A. Yes, sir; and I explained that whole conversation.

Q. Now, Mr. Dempsey is present in the room, isn't he?—A. Yes, sir.

Q. And you understood also that he was subpœnaed as a witness in this case?

Mr. Feigenbaum. If you know of your personal knowledge, not hearsay.

A. I understood so; yes.

Mr. Barrett. All the members of the board were subpœnaed?

A. Yes, sir.

Q. And Chairman Arnold's deposition was taken by contestant?—A. Yes, sir.

Q. And your deposition was taken?—A. Yes, sir.

Q. And Mr. Dempsey's deposition has not been taken?—A. Thus far not; no.

(Signature waived by agreement.)

Mr. Barrett. Now, I ask that in fairness to Commissioner Dempsey he be given an opportunity, so far as this record is concerned—that he be put on the stand and let him make a statement under oath as to any conversation which anybody made reference to here.

Mr. Feigenbaum. Now, let me say for the record, that it is my understanding that the witnesses subpœnaed are subpœnaed by either contestant or contestee, and that no witness comes here of his own volition, or from personal anxiety to testify; that contestee will have full opportunity to examine, or even reexamine any of the commissioners of the St. Louis board of election commissioners, and that we will produce our testimony and question our witnesses as we find necessity requires to get in as much evidence as we can in our allotted time.

Mr. Barrett. Then you are unwilling at this time to interrogate Commissioner Dempsey as to the matters referred to in the testimony of Commissioner Buder, or the matters referred to in your questions as to your client and other persons?

Mr. Feigenbaum. I have no desire at this time to examine Mr. Dempsey, but will be perfectly willing to see Mr. Dempsey testify at the right time when called on, and may take the opportunity of examining him.

Mr. Barrett. All right.

The Notary. Now, do you want to question Maj. Hawes?

Mr. Feigenbaum. I want to say this with regard to Maj. Hawes having just been sworn, that the statement or argument he made he has already made. My only objection to the proceeding was that the contestant, Mr. Bogy, undertook to make a similar statement, or a statement commenting on some testimony and was stopped in the midst of his statement on account of his not having taken oath, and this was not done during the statement of contestee, and he was not under oath.

Maj. Hawes. I desire to have the record show that counsel has not stated the facts, insomuch as the statements made by me related to the proceedings of this board, but that the contestant, Bogy, started to make statements of occurrences that had nothing whatever to do with the subject of this recount and antedated even the filing of his notice of contest. It was not an attempt to put into the record matters relating to the conduct of the board or the recount, but to put into the record matters that had no connection whatsoever with the recount.

Mr. FEIGENBAUM. Well, all the testimony in the record will show what the true statements made this morning were, and whether my statement was within the record. I simply want to point out that Mr. Bogy's statement referred and answered a charge insinuated by Mr. Hawes to the effect that Mr. Bogy was attempting to delay or cause delay in the taking of depositions, and his statement was to the effect that there were good and substantial reasons why the proceedings could not be had before the time undertaken.

At this point, 5 o'clock p. m., the further hearing of these depositions was, by the notary, continued until to-morrow, Wednesday, January 26, 1921, to be resumed at that time at room 316 Chemical Building, in the city of St. Louis, Mo.

Pursuant to the adjournment, as above stated, on the 26th day of January, 1921, between the hours of 8 o'clock in the forenoon and 6 o'clock in the afternoon, at the same place, I continued the taking of said depositions, as follows, viz:

Appearances: The same as yesterday.

JAMES W. SELSOR, of lawful age, being produced, sworn, and examined on the part of the contestant, deposeth and saith:

Direct examination by Mr. FEIGENBAUM:

Q. Will you please state your full name?—A. My name is James Webster Selsor.

Q. Where do you live?—A. 1308 North Market Street.

Q. What ward and precinct is address located in?—A. Third ward, eighth precinct.

Q. Are you a voter from that precinct?—A. Yes, sir.

Q. How long have you resided at that address, Mr. Selsor?—A. I moved to that address on the 5th of June; I lived two doors previous to that for three years.

Q. You lived in that same precinct for the last three years?—A. Yes, sir; for the last three years.

Q. Are you affiliated with any party in politics?—A. I was last fall.

Q. What party?—A. Farmer-Labor.

Q. Now, as such did you have any credentials in your possession entitling you to be present at these precincts of the third ward?—A. Yes, sir.

Q. What were they?—A. The credentials of the Farmer-Labor Party. I said Farmer-Labor Party before, but here we had to go under the name of the Farmer-Workers Party.

Mr. BARRETT. I object to that question as calling for a conclusion and ask it be stricken out on the ground that the credentials would be the best evidence as to whether he was authorized.

Mr. FEIGENBAUM. Have you any credentials in your possession now?

A. Now, sir, I have not; I have them at home.

Mr. BARRETT. I ask they be produced.

Mr. FEIGENBAUM. Who furnished you those credentials?

A. The central committee of the Farmer-Workers Party.

Q. Credentials for what were they?

Mr. BARRETT. I object to that also. The credentials speak for themselves and the best evidence as to their contents.

Mr. FEIGENBAUM. If we can get the witness to produce those credentials we will file them in the record, but at this time we simply want him to identify the credentials so we may proceed with his testimony.

Q. Now, did you undertake to enter that polling place as a watcher for the Farmer-Workers Party?

Mr. BARRETT. I object to this line of examination, because at this time it has not been shown that the witness was a duly authorized and accredited person to enter in there other than as a voter and to act as a challenger or a watcher.

A. Yes, sir.

Mr. FEIGENBAUM. And what time of the day did you undertake to enter that place?

A. Seven o'clock in the evening, when the polls were closed.

Mr. BARRETT. I object to this line of examination, because no evidence has been produced that this witness was a duly authorized or accredited worker for the Farmer-Workers Party or, on the evidence so far produced, as a challenger, no evidence produced. The papers are the best evidence.

Mr. FEIGENBAUM. Can you bring those papers down during the day?

A. I think so.

Q. Well, we will include those, then, in the records. We ask the privilege of including that letter as part of the testimony when we have had it properly identified.

Mr. BARRETT. We want to look at it and make our objections before you introduce it.

Mr. FEIGENBAUM. Certainly.

Q. Now, when you undertook to enter that polling place did you show those credentials you have mentioned and which you will later produce?—A. Yes, sir.

Q. You showed those to whom?—A. To the judge, Mr. George Luenholder, and the Democratic judge, Simmons.

Q. Who is Luenholder?—A. The Republican judge.

Q. Who is Simmons?—A. J. P. Simmons, Democratic judge.

Q. Were you permitted to stay there?—A. No, sir. I met Mr. Simmons on the outside.

Q. He was the Democratic judge?—A. Yes, sir. He was standing on the sidewalk. I walked up and I said, "Jake, I'm going in here as watcher." He says, "Jim, I guess it's all right with me; you will have to see the other judges." I walked in. Luenholder was sitting on the table—the Republican judge—and I handed my credentials to him, signed by myself. I was chairman of the city central committee of the Farmer-Workers' Party at the time, and asked him to be there. He shook his head. He says, "We voted not to allow any watchers or any more here." I says, "Is that the decision of the judges here?" and he said it was.

Q. Were the other judges and clerks present?—A. Yes, sir; at that time Simmons walked in. I turned to Simmons and asked him: "Is that the decision of the judges? Judge Luenholder said they had taken a ballot to-day to allow no watchers of any kind in the polling place." He said it was. And the doors closed; and at that time Tony Hinkle, the fellow that runs a soft-drink bar, told them he would take the ballot boxes to the city hall as soon as they closed up, to come and call him.

Mr. BARRETT. I object to that because it is hearsay and not binding on the election commissioners.

Mr. FEIGENBAUM. What you were just relating was said in the presence of the judges and clerks of that polling place?

A. Yes, sir.

Q. Go ahead and tell us what was said and what the judges and clerks said.—A. In regards to Hinkle?

Q. Yes.—A. They agreed to call him when they got through counting the ballots.

Q. And let him take them down to the city hall?—A. Yes.

Q. Who was Hinkle?—A. Tony Hinkle is a man that has got a soft-drink parlor on the corner of Thirteenth and North Market.

Q. Is he a politician, that you know of?—A. I know him personally.

Q. Does he mix in politics, are you sure?—A. Yes, sir. The number of his bar is 1300 North Market.

Q. Do you know what his politics are?—A. His politics is, he is a Democrat—Brogan Democrat.

Q. Brogan Democrat?—A. Yes; different kinds of Democrats up in our ward.

Q. He is what you call a Brogan Democrat?—A. Yes, sir; had Folk Democrats, Brogan Democrats, and Hawes Democrats up there.

Q. I am going to ask you this question. I don't know whether you can answer it or not. But do you know whether the Brogan Democrats and Hawes Democrats in that precinct worked together?

Mr. BARRETT. Well, that's immaterial.

Mr. FEIGENBAUM. I want to see whether they went together. Do you know whether they did or not?

Mr. BARRETT. We are not trying the people called "Hawes Democrats" or "Brogan Democrats" or any kind of Democrats.

A. Well, he was a Brogan worker anyway, and a good fellow at that.

Mr. FEIGENBAUM. Did you get into that polling place at all that night.

A. No, sir.

Q. Never did get in. That is all, with the exception I want to ask you to bring those credentials down during the day. Can you do that?—A. I will try to. The chances are they might be mislaid. I had them at the house. I will try to.

Q. If they are still in your possession and you have not lost them, will you produce them this afternoon?—A. Yes, sir.

Q. Are you a member of some labor organization?—A. Yes, sir; I belong to two.

Q. Do you know Mr. Bogy?—A. Yes, sir.

Q. Have you known him in the past?—A. Yes, sir.

Q. Do you know whether or not he received the support in any measure of the labor organizations in your district?—A. Well, now, as to that I have heard—you mean as a body?

Q. No; as individuals, among the members.—A. Yes, sir.

Q. Whether he received any substantial support?—A. I have heard that.

Q. When you heard that, you mean favorably for him?—A. Yes, sir.

Q. Very many of the members favorable, you mean?—A. Yes, sir.

Cross-examination by Mr. BARRETT:

Q. This talk you heard among members of the organization, where was that?—A. Just casual talk, barroom talk.

Q. They didn't make any organized effort, didn't spend any money in his behalf, did they?—A. Not as I know of.

Q. They didn't get up any ward or precinct organization or canvass the ward, house-to-house canvass?—A. The organization I had any chance to see was what I was trying to promulgate myself.

Q. Your own organization?—A. Yes.

Q. I say, you didn't see anything like that done by members of organized labor?—A. No, sir.

Q. You didn't see anything done in Mr. Bogy's behalf in that ward by anybody, did you?—A. Yes, sir.

Q. You were engrossed during that time with your own organization known as the Farmers-Workers Party. Now, Jim, were you around the ward that day?—A. I was after 1 o'clock.

Q. One o'clock in the afternoon?—A. Yes, sir.

Q. You wasn't around in the morning?—A. No, sir; I was at various other places.

Q. How many places did you go in that ward?—A. I was at three different places during that afternoon.

Q. You mean in the third ward?—A. Yes, sir.

Q. There was no disturbance going on?—A. Not that I know of.

Q. Everything you could see and observe was in order?—A. Outside.

Q. Well, inside, you saw no improper conduct any place, did you?—A. No, sir.

Q. Did you visit any other ward in that district?—A. I was in the nineteenth, eighteenth, and twentieth in the forenoon.

Q. And those wards had been quiet and orderly?—A. Seemingly on the outside.

Q. You saw nothing improper on the inside of any of those places?—A. No, sir.

Q. You didn't go in?—A. No, sir.

Q. As far as your observations were from the outside everything was quiet and orderly just the same as every other decently conducted election?—A. Yes, sir.

Q. Now, you are chairman of the city committee of the Farmers-Workers Party?—A. I was at that time.

Q. Well, ain't you still?—A. Yes.

Q. The organization is still in existence?—A. We have an organization, but I think we are going in the independent movement.

Q. Are you going to change the name of it?—A. Of the National; no, sir.

Q. Locally you are?—A. I am chairman of the city central committee as it reads to-day.

Q. Your organization, of which you are chairman, consisted of one man from each of the 28 wards from the city of St. Louis?—A. Yes, sir.

Q. And it took an active part in the campaign to elect its ticket?—A. Yes, sir.

Q. And you had a full ticket?—A. Yes, sir.

Q. Did you have a candidate for Congress in the eleventh district?—A. Yes, sir.

Q. Who was it?—A. Mr. P. W. Allen.

Q. You were interested in Mr. Allen's campaign?—A. Yes, sir.

Q. You did everything you could in his behalf?—A. Yes, sir.

Q. And every other member of your organization in that district did the same thing as far as you know. Now, Jim, what organized labor union are you a member of?—A. I am a member of the Carpenters' and Joiners' Local 1596, meet at 2034 Locust Street.

Q. Regular member in good standing, as I understand it?—A. Yes, sir.

Q. Are you a member of any other organized labor?—A. I am a member of the United Leather Workers.

Q. You are a member in good standing?—A. Yes, sir; I am a woodworker by trade, but joined the leather union, working in a trunk factory.

Q. Now, you are a member of those two organizations?—A. I have taken my withdrawal as a member of the leather workers.

Q. Now, did you ever at any of those meetings of those organizations vote any indorsement of Mr. Bogy?—A. Not in my presence.

Q. Did you hear anything about an indorsement by organized labor of the candidacy of Mr. Hawes?—A. No, sir.

Q. Did you hear of any effort being made?—A. Not when I was at the meeting.

Q. Is it not a fact, Jim, that it was published in the newspapers that Mr. Hawes was indorsed by a committee of the American Federation of Labor?—A. Nonpartisan; yes, sir; I knew of that fact, but that was not a local organization.

Q. But that was reported and published in the newspapers during the campaign?—A. Yes, sir.

Q. That committee was a joint committee representing all unions of the city of St. Louis selecting out candidates who they would support on investigation?—A. No, sir; it was not; it was a joint committee representing the Central Trades and Labor Union, national organization of labor.

Q. Your organization was not affiliated with it?—A. Yes, sir.

Q. But the Central Trades and Labor Council, which is affiliated with the American, did appoint a committee to investigate all candidates?—A. Yes, sir.

Q. Each local?—A. Yes, sir.

Q. And they indorsed and recommended that the candidates they indorsed be supported?—A. Yes, sir.

Q. And Mr. Hawes was recommended and indorsed for Congress in the eleventh district?—A. So I seen by the papers.

Q. And other candidates on the national, State, and city tickets were likewise indorsed for various offices?—A. Yes.

Q. In other words, they made recommendations of all candidates for public office?—A. Yes, sir.

Q. Some Republicans and some Democrats—is that right?—A. I believe that is right.

Q. Now, then, you say when you entered the polling place that George Luenholder, a Republican judge, told you that you could not enter there, that they would not allow anybody, and they had not taken a vote?—A. Yes, sir.

Q. And you went out and never went back; so you don't know what transpired thereafter, do you?—A. I do not.

Q. Now, you spoke something about Brogan Democrats and Hawes Democrats. Was a special effort made there for Brogan and Hawes?—A. There was; yes, sir.

Q. There were men running around all day with badges hustling?—A. There were quite a number of them; and women, too.

Q. And women, too?—A. Yes, sir.

Q. Hustling to bring out voters for Hawes and Brogan?—A. Yes, sir.

Q. If a voter came down the line they would buttonhole him and ask him to vote for Hawes and Brogan?—A. Yes, sir.

Q. A voter could not hardly go to the polls in that ward without somebody soliciting his vote for Brogan or Hawes; is that right?—A. Yes, sir.

Q. You didn't see anybody making a special effort around there in Mr. Bogy's behalf, did you?—A. I did not.

Q. You found an earnest effort on the part of individuals or Democrats, some went through the district, soliciting votes for Mr. Hawes?—A. Yes, sir.

Q. Wherever you went in the district?—A. Yes, sir.

Q. And Mr. Brogan, in that election, ran about 1,500 to 2,000 ahead of his ticket, in that ward, didn't he?—A. I believe about 1,700.

Q. Ahead of his ticket in that ward?—A. Something like that, if I am not mistaken.

Q. He has a large personal following, hasn't he?—A. It seems so.

Q. And a great many Republicans voted for Brogan, didn't they?—A. I believe so; yes, sir.

Q. And a great many Republicans in that ward voted for Hawes, also?—A. I could not say that.

Q. Well, you have heard some of them say so?—A. I have never heard a Republican yet say that he voted for Hawes.

Q. Well, you heard them say that they would and were going to vote for Brogan, didn't you?—A. Oh, yes; quite a number of them.

Q. Well, some talk about one of the Republican factions in that ward supporting Brogan, wasn't there?—A. Well, I don't know that there was. How was that question?

Q. Supporting Brogan?—A. The Republican faction?

Q. One of the Republican factions in that ward?—A. Well, I have heard some of them say that Brogan——

Q. There are two Republican factions in that ward?—A. Supporting Brogan, you mean?

Q. Were both factions supporting him, or just one faction?—A. I am not familiar with the factional fight in the Republican Party.

Q. There is what is known as the "Bishop" wing of the Republican Party and the "Umbria" wing; they are always fighting?—A. I think they are always, from what I can hear.

Q. They invariably have contests at every primary, those two factions of the Republicans?—A. How is that?

Q. There is a contest between those two factions of the Republicans at every primary?—A. Have been every year since Umbria has been in politics. I don't know the man personally.

Q. And sometimes becomes very bitter?—A. It seems to me this last fight.

Q. And they carried that into the last election; and they were generally pretty much against Joe Eberling, the Republican candidate for State senator in that district.

Mr. Feigenbaum. I object to that question, because that is undertaking to elicit testimony as to some other contest. Joe Eberling and Brogan are not——

Mr. Barrett. Now, the so-called Brogan Democrats were very active in Mr. Hawes's behalf?

A. Not so very much so; they seemed to be centered on Brogan.

Q. I thought you said Hawes Democrats and Brogan Democrats.—A. Yes, sir.

Q. They wore badges?—A. Some.

Q. Some had two badges?—A. Some.

Q. Some have Brogan badges, and some have Hawes?—A. Yes, sir.

Q. They were out there soliciting each voter that came to the polls?—A. Yes, sir.

Q. So far as you could see and observe they used every human endeavor possible to secure votes for both Brogan and Hawes?—A. I never heard Hawes mentioned. But on that day when I went up to the polls myself to vote, about 1.30, one man got off the car—a stranger to me—doesn't live in my precinct—I didn't know him—he walked up to me and says, "Don't forget Brogan."

Q. You went into the polling place that day and voted yourself?—A. Yes, sir.

Q. Prepared your ballot?—A. Yes.

Q. To put in the ballot box?—A. Yes.

Q. How long did you stay in there?—A. About 15 minutes.

Q. Talk with the boys?—A. Spoke to them, know them all personally.

Q. Pass the time of day?—A. Yes, sir; asked them how many ballots had been voted.

Q. They gave you that information?—A. Yes; they showed me the precinct list; my ballot was 262.

Q. And at that time there was no quarreling or fussing going on there?—A. Not a bit.

Q. As far as you could see, everything was being properly conducted?—A. Yes, sir.

Q. Jim, can you recall now what the total Farmer-Labor vote was in the eleventh congressional district?—A. Well, I have seen two or three published statements of it; I don't recollect. First, one time it was 452, and another time it was different, and it was so I wouldn't know myself. Mr. Barrett, could you answer that question?

Q. No! I can't, Jim.—A. I would like to find out myself.

Q. Did you ever take the trouble to go to the election commissioners' office to find out what these returns were on that?—A. No; I was too busy making a living. I work every day. I couldn't afford to lose any time.

Redirect examination by Mr. Bogy:

Q. You have known of my name for a good many years, have you not, Mr. Selsor?—A. Yes, sir.

Q. Do you not believe, or do you believe that for a great many years, since the year 1900, my name has been favorably known among the working classes of the people of St. Louis?

Mr. Barrett. I object to that as calling for an opinion.

A. I have, in an odd way, speaking generally of the working people.

Mr. Bogy. You never heard of any feeling antagonistic toward me among the working class of St. Louis, have you?—A. No, sir.

Mr. Barrett. I object to that as apparently an effort on the part of contestant to prove that he is not a man of repute.

Mr. Bogy. It is not a question about reputation.

Mr. Barrett. It has not been attacked.

Mr. Feigenbaum. No question about reputation; just the one issue made by Maj. Hawes as to whether or not the contestant was favorably received by labor in the last election.

Mr. Bogy. And the union of which you are a member took no action in this antagonism toward me, did they?

Mr. Barrett. I object, because it is a leading question and suggesting the answer.

Mr. Bogy. I will change my way of asking it. Did your organization, of which you are a member——

Mr. Barrett. Which organization?

Mr. Bogy. He has referred to the fact—did either one of them or both of them take any action against me condemning me in any way?

Mr. Barrett. I object to that question as not in issue.

A. No, sir.

Mr. Feigenbaum. Now, the indorsement that you stated you read of in the newspapers of Maj. Hawes by the committee affiliated with the American Division of Labor, was that indorsement recognized as an indorsement of the local body or some extraneous outside body?—A. It was not recognized from the local subordinate union.

Q. It was not recognized as an indorsement by local labor at all?—A. No, sir; not as far as the locals were concerned.

Q. The labor locally didn't take that seriously?—A. No, sir; not the rank and file.

Q. Now, you stated that some of these men you referred to, Brogan Democrats and Hawes Democrats, wore badges?—A. Yes, sir.

Q. Did they wear these badges right in front of the polling places?—A. Yes.

Q. Within how many feet, 5 or 10?—A. Oh, they were marching up and down the sidewalk; it was pretty crisp that day, and they would turn around and walk past the polling place, and so for all places where I was that afternoon.

Q. Were they soliciting votes right in front of the polling place?—A. Yes, sir.

Q. Within how many feet of the polling place?—A. I can only speak of my own experience where I was; it was on the corner, probably a hundred feet.

Q. From the polling place?—A. From the polling place, where they stopped me.

Q. Now, were any being solicited right in front of the door?—A. I didn't notice any there; they were marching up and down the sidewalk, though.

Q. Did you see any of the machines driving up to any of these polling places with the signs of Hawes?—A. No, sir.

Q. You didn't see any of those machines?—A. No; I didn't. I missed those, I guess.

Q. You said you voted ballot 262?—A. That was the number of my ballot.

Q. What time of day did you vote?—A. About 1.30.

Q. Two hundred and sixty-two votes had been cast?—A. Yes, sir.

Recross-examination by Mr. Hawes:

Q. Mr. Selsor, you are a member of the carpenters' union?—A. I am a member of the carpenters' union, you say?

Q. Yes, sir.—A. No, sir; I am a member of the Cabinet Makers and Machine Hands, Carpenters, and Joiners.

Q. That organization is affiliated with the American Federation of Labor, is it not?—A. It is.

Q. The American Federation of Labor caused a committee to be formed in each city in the United States to pass upon the qualifications of candidates for office, did it not?—A. Yes, sir.

Q. And such a committee was formed in the city of St. Louis, was it not?—A. Yes, sir.

Q. And your organization is affiliated with the Central Trades Labor Union of the city of St. Louis?—A. Yes, sir.

Q. And that organization appointed a local committee to investigate the records of candidates for office?—A. Yes, sir.

Q. And that special committee conducted an investigation which extended over some weeks of time?—A. Yes, sir.

Q. And they finally made a report?—A. Yes, sir.

Q. And this report selected either a Democrat or a Republican for each candidate on the ticket, each office?—A. Yes, sir.

Q. And that was made public in the newspapers?—A. Yes, sir.

Q. Didn't you see circulars distributed advocating candidates whom they had indorsed?—A. I did.

Q. Didn't the labor papers of the city contain an account of these indorsements?—A. Yes, sir.

Q. And you knew that I had received the indorsement in that district?—A. From this committee.

Q. From that committee which represented the Central Trades and Labor Union?—A. Yes, sir.

Q. Who is president of your union now?—A. Why, a fellow by the name of George.

Q. Do you happen to know that Mr. Gompers is a personal friend of mine and entertained at my home occasionally?

Mr. FEIGENBAUM. I object to that as immaterial.

A. No, sir; I did not.

Maj. HAWES. You did not know that?

A. No, sir.

Q. Are you aware that I was selected by the Central Trades and Building Trades Council to make a speech for union labor at Forest Park Highlands in the year 1919?—A. You were, over the protest of some individual members.

Q. Over the protest of some individual members?—A. Yes, sir.

Q. But I was selected and delivered that speech?—A. I read of it.

Q. And the speech was handled in the labor papers of this city and by the press of this city?—A. Well, I couldn't say that; I can not answer that question.

Q. You read the labor papers' don't you?—A. What labor paper to you refer to?

Q. Any in the city—for instance, one that Moran has charge of, and carried the speech in full.—A. Yes, sir; I believe I read it in that paper.

Q. Were you in that parade that day, Mr. Selsor?—A. No, sir.

Q. But you remember, of course, that all of the papers carried from a column to two columns and a half of that speech, I believe?—A. I didn't read the speech in full.

Q. But you saw it in all the daily newspapers?—A. I noticed it in the papers; yes, sir.

Q. Are you aware of the fact that I have written a division in the international dispute between four and five different unions before the executive council of the A. F. of M.?—A. No, sir; I am not aware of that fact.

Q. But you do know, or do you know, that over a period of many years the leaders of the various unions in this city have been personally exceedingly friendly with me?—A. That is the trouble with the labor unions in this city.

Q. But isn't that a fact, that the leaders have been and the rank and file have been friendly with me?—A. Not the rank and file, not of my local; I am only speaking of my local. I filed a protest to——

Q. Not of your local?—A. No, sir; I protested.

Q. But as a general rule they are friendly with me?—A. No, sir; not those I come in contact with. Major, excuse me now, you are asking me about somebody else; other locals that I didn't attend.

Q. Yes.—A. But I am only speaking of my own local; the rank and file that I come in contact with in my own local are not favorable to you, Major. I opposed that report of Mr. Ellenbanks on the grounds, which, of course, I will not state here. In my local, I got on the floor and the report was unfavorably received at the time, and the indorsement of Dyer and Newton and yourself—I opposed that.

Q. Mr. Dyer in the twelfth district was indorsed by this committee?—A. Yes, sir.

Q. Mr. Newton, in the tenth?—A. Yes, sir.

Q. And Mr. Bogy was turned down in the eleventh and I was indorsed in that district by the regularly, legally constituted committee representing all unions in the city of St. Louis and in the Nation; is that correct?—A. That was the American Federation of Labor and the Central Trades and Labor Union. You know, Major, that the rank and file of the labor unions to-day are not in sympathy with the American Federation of Labor as it exists under Gompers's rule, and if it was left to a referendum vote of the American union men to-day Gompers would not get 10 per cent of the votes, for the ordinary rank and file of the American labor have come to the conclusion that Gompers outlived his usefulness 20 years ago. I said that 20 years ago.

Q. The fact remains, Mr. Selsor, that there were three Republican candidates for Congress in this city?—A. Yes, sir.

Q. And that this committee of the central trades and the central building trades——A. Yes, sir.

Q. Indorsed Mr. Dyer?—A. Yes, sir.

Q. Indorsed Mr. Newton?—A. Yes, sir.

Q. And refused to indorse Mr. Bogy?—A. Yes, sir.

Q. But they did indorse me?—A. Yes, sir.

Q. Further, it was wise enough that they did it?—A. Well, we thought it was not wise, that is, the general rank and file.

Maj. HAWES. That is all.

Mr. FEIGENBAUM. You have no personal feeling against Maj. Hawes?

A. Not a bit in the world.

Q. You may go.

JAMES W. SELSOR, afterwards on the same day, being recalled further deposeth and saith:

Direct examination by Mr. FEIGENBAUM:

Q. Mr. Selsor, will you tell us what this is?—A. Watcher's credentials.

Q. When did you receive that?—A. The night before election, November 1,

Q. Now, this is the paper that you showed the election judges at the polling place of the eight precinct, third ward, when you undertook to enter?—A. Yes, sir.

Mr. FEIGENBAUM. I ask that be marked "Contestant's Exhibit A." and offer it in evidence.

Mr. BARRETT. I object to it being offered in evidence, as being incompetent, irrelevant, and immaterial, not competent for any purpose.

NOTARY PUBLIC. Do you challenge this man's veracity as being a watcher?

Mr. BARRETT. I am not challenging the man's veracity. I have made my technical objection, and that is all.

(Said paper offered in evidence was marked by notary public as "Contestant's Exhibit A" for identification, and is herewith attached and returned as a part of this deposition.)

Subscribed and sworn to before me this ——— day of ———, 1921.

My commission expires September 9, 1921.

FRANK B. GRODZKI, *Notary Public.*

CONTESTANT'S EXHIBIT A.

[Farmer-Worker Party of Missouri affiliated with Farmer-Labor Party of the United States.]

ST. LOUIS, MO., *October 30, 1920.*

To the judges of election, ward 3, precinct 8:

This is to certify that J. W. Selsor residing at 1308 N. Market Street and ——— residing at ——— are officially authorized to act as watchers for the Farmer-Workers Party in the aforesaid precinct at the election November 2, 1920.

(Signed) J. W. SELSOR,
Chairman City Central Committee Farmer-Workers Party.

WILLIAM RHODES, of lawful age, being produced, sworn, and examined on the part of the contestant, deposeth and saith:

Direct examination by Mr. FEIGENBAUM:

Q. State your name in full, please?—A. William Rhodes.

Q. Where do you live?—A. 2818 North Twelfth Street, at the present time.

Q. In what precinct and ward do you reside?—A. Fourth.

Q. Fourth ward?—A. Yes, sir.

Q. And what precinct?—A. Second.

Q. Fourth ward, second precinct?—A. Yes, sir.

Q. How long have you voted in that ward and precinct?—A. The first time.

Q. How long have you resided in that precinct?—A. Well, about eight months.

Q. You registered in that precinct?—A. Yes, sir.

Q. Now, were you at or near the polling place in the second precinct in the fourth ward on the 2d of November, 1920, at the last general election?—A. Yes, sir.

Q. Did you cast your vote on that day?—A. Yes, sir.

Q. Will you tell us, what, if anything, you noticed with reference to any violations or intimidations used on voters? In your own way tell us what you noticed.—A. Well, the things went on pretty nicely; I never saw anything was bad, I guess. I saw some, too—I noticed when some voters went in that they asked their names and he never gave them their full amount of ballots.

Q. Didn't give them all the ballots of the different parties?—A. Yes, sir; I noticed that more than once.

Q. Did he give them any particular ballots?—A. Well, I never seen any particular ballots handed over; no, sir; personally. I never picked ballots up and looked at them.

Q. Now you are speaking of what occurred inside of the polling place?—A. Yes, sir; only.

Q. Now, what else, if anything, occurred that attracted your attention inside of the polling place with reference to the action of the clerks or judges?—A. Well, I noticed sveral of the voters when they went back to vote took ballots; that there were several different times that some one would go along and kind of hesitate them on which way to vote; that was on the inside of the polling place.

Q. Well, who would that be, a judge, or clerk, or some worker?—A. Well, I assume it was just one of the standbys.

Q. Inside of the polling place?—A. Yes, sir.

Q. Did they wear badges, that would walk up and talk to them?—A. One of them didn't.

Q. Did some of them wear badges?—A. Well, there were some boys in there and some women in there that wore badges, that were talking to different ones.

Q. Were there any with Hawes badges?—A. I don't say particularly that there was.

Q. If you don't know——

Mr. BARRETT. I suggest that you not lead the witness.

Mr. FEIGENBAUM. Will you tell us what badges those persons wore that went in and talked to the voters?—A. I would'nt swear any particular name, I saw one or two turn their badges over that didn't leave their names there.

Q. Do you know whether they were Democrats or Republican workers?—A. Both.

Q. Both?—A. Yes, sir.

Q. Inside of the polls?—A. Yes, sir.

Q. Do you know whether they urged any particular candidates to the voters?—A. Well, mostly talk was Mr. Hawes, that is as I got—that is, the most I got.

Q. As far as you heard, that is all really I ask for, what you heard.—A. I am speaking personally.

Q. You heard them mention Mr. Hawes's name?—A. I did; yes, sir.

Q. To the voters?—A. Yes, sir.

Q. That was inside of the polling place?—A. Yes, sir.

Q. Would they ask them to vote for Mr. Hawes?—A. Yes, sir; ask them to, personally. They made out like this: They says, "Well, I believe"—pat them on the back, and take them over to the caboose, and says, "What ticket have you got on top"? Maybe one of them would have Mr. Bogy on top, and he would say, "Ain't there a better one on the bottom, or middle"? Maybe Mr. Hawes would be on top, and they would reverse it back and forth. How they would vote, I could not say.

Q. But you say they did mention Mr. Hawes's name?—A. Yes, sir.

Q. Request them to vote for Mr. Hawes?—A. Yes, sir; absolutely.

Q. Inside of the polling places?—A. Yes, sir.

Q. Now, was an officer inside of the polling place?—A. Yes, sir; asleep; might as well tell the truth; he had his eyes shut. If he is behind a porch with his eyes turned this way, he can't see this way.

Q. He wasn't paying particular attention to what was going on?—A. Not as I could see; he was backwards.

Q. You didn't hear anybody mention Mr. Bogy's name inside of the polling place?—A. Well, we might hear them mention names of all parties, but not in referring to any voting; I never heard it.

Q. You never heard anybody ask anybody to vote for Bogy?—A. No, sir; I did not; I'll swear I did not.

Q. Now, as to what occurred outside, getting your mind away from what happened inside of the polling place, did you see any machines drive up in front of the polling place and unload voters?—A. Well, I don't know as exactly voters; they never came in directly out of a machine; they stood on the corner and talked around among these fellows and come in.

Q. You say some of these machines stopped right in front of the door of the polling place?—A. Two did.

Q. Did they have these big banners on the back of the machine?—A. One did.

Q. What was on that banner?—A. Mr. Hawes.

Q. Mr. Hawes's name was on that banner?—A. Yes, sir.

Q. That stopped in front of the door?—A. Big green machine.

Q. How long did that machine stay there, about?—A. A few minutes and go away.

Q. Did it let people off?—A. Two got off.

Q. They went in to vote?—A. Not direct; they went in the saloon and they come in.

Q. They got out at the corner and then went to the saloon and then came back and voted?—A. Yes, sir.

Q. Anybody go in with them to the saloon?—A. This driver or chauffeur, one of the bunch, and there was only two men come in the polling place, and a man got in the machine and went away.

Q. Did this man in the machine have a badge on?—A. I never noticed.

Q. On the back of the machine was a large banner, "Hawes"?—A. Yes, sir.

Q. Now, did you hear any conversation that took place right at the door on the outside with reference to Mr. Hawes's name being mentioned?—A. No, sir.

Q. You didn't hear that?—A. No, sir.

Q. In the second precinct of the fourth ward, the one you are referring to, were there many people waiting in line?—A. Well, quite a few in the morning.

Q. That is nothing out of the ordinary?—A. No, sir; didn't see any out of the ordinary.

Q. And during the day, did the line move pretty well?—A. I don't know as they were stopped on any particular occasion, any blocked, or anything like that happened.

Q. Did the line seem to move pretty well?—A. Yes, sir.

Q. Do you know whether or not that is a Democratic precinct?—A. I do not; I couldn't say.

Q. Of course, when I say Democratic precinct, I don't mean it is owned by Democrats or Republicans; I mean the majority of the votes generally cast?—A. I know what you mean.

Q. Of course, it is a public precinct?—A. It ain't what they say; it is what they did.

Q. Well, now, when you were inside of the polling place, did you see any money on the table or not?—A. I did.

Q. How much money did you see on the table?—A. Well, not less than $20.

Q. Well, had it been laying around there? Who laid the money there?—A. I never saw the money laid there.

Q. But you saw the money laying on the table?—A. I did with my own eyes.

Mr. BARRETT. I want to ask if there is any charge of bribing or corrupting a judge of election in this city?

Mr. FEIGENBAUM. I am not prepared to say there was any.

Mr. BARRETT. I want to know if there is any such allegation.

Mr. FEIGENBAUM. You said you saw $20 laying on the table?

A. Not less than that.

Mr. BARRETT. At this time I am going to object to any testimony being offered to show that there was money there on the ground there is no charge of corruption or bribery of election officials in the second precinct of the third ward; and ask counsel to pick out any particular charge anywhere in his notice of contest charging these officials with dishonesty. I want to ask him if he intends to charge the election officials of that ward with being bribed or corrupted by the use of money, especially when it is well known that the committeemen of both organizations for years have made it a practice of buying the lunches and dinner for the judges and clerks and leaving the money with them for that purpose. It is computed as a part of the expenses of each organization. And it is well known in this city that there has been a practice growing up among the judges and clerks of both parties themselves to "chip in" a small sum of money for the purpose of buying cigars and refreshments, and those things were not done for the purpose of influencing the judges or clerks one way or the other. And in view of these practices, which were innocent in themselves, and have no deliberate motive or purpose, I now insist that counsel for contestant state whether or not he has made any charge in his notice of contest charging the election officials of the second precinct of the third ward with bribery and corruption or being influenced by the use of money; and if he does, to point to the particular section. If he refuses to do it, I now ask him to state if that is the object of this inquiry.

Mr. FEIGENBAUM. Counsel has made a long statement into the record, which is not borne out by any evidence, with reference to how far men interested in politics can go to place at the disposal of election officials money, and I am not going to encumber the records by denying any of these statements until some evidence appears of what proper customs are, and I am just going to ask the witness to answer my question.

Mr. BARRETT. Counsel understands that counsel for contestant refuses to answer my question?

Mr. FEIGENBAUM. Counsel is not under oath.

Mr. BARRETT. Well, it is as to whether or not you will attempt to prove under that allegation any misdemeanor on the part of the election officials by the use of money. We have a right to know that. I think it is only fair. You have not made any such allegation in the notice of contest. We have a right to know if you will attempt to do that, notwithstanding you have made no such allegation.

Mr. FEIGENBAUM. Who had charge of the money laying on the table?

A. I didn't see particularly anyone.

Q. That money was just laying freely on the table?—A. Yes, sir.

Q. Was it in front of any of the judges?—A. About in the center of the table.

Q. When a voter would approach and get his ballots, would he get very close to where the money was laying?—A. Well, the ballots was laying—not exactly any more closely than anyone else would be; that is, the judges and clerks.

Q. Would he come within reach of it.—A. It was only a pool table; anybody could reach it.

Q. Did you see anybody take any?—A. I did not; no, sir.

Q. Mr. Rhodes are you affiliated with any labor union?—A. No, sir.

Q. You are not a member of any labor organization?—A. No, sir.

Q. Are you in business for yourself?—A. No, sir.

Q. What is your occupation?—A. Just an operator.

Q. Machine operator?—A. Distillery, a still in chemical works.

Q. Anybody drink it?—A. Some of them drink alcohol.

Q. You don't drink any of it?—A. No, sir; the smell of it, that's enough for me.

Q. Do you know Mr. Hawes and Mr. Bogy personally?—A. No, sir.

Q. You have no feeling one way or the other, either against Mr. Hawes or in favor of Mr. Bogy?—A. No, sir; I never met either one of them face to face, only I saw Mr. Bogy in the hall. I never knew that was Maj. Hawes.

Q. You have no personal feeling against him?—A. No, sir; never knew him.

Cross-examination by Mr. BARRETT:

Q. You reside at 2818 North Twelfth Street?—A. Yes, sir.

Q. How long have you lived there?—A. I have been living there right on for two months.

Q. Two months?—A. Pretty near two months.

Q. You did not live at that address on the 2d day of November, 1920?—A. No, sir.

Q. Where were you residing then?—A. 2417 North Ninth Street.

Q. At that time, were you employed by this chemical company?—A. Yes, sir.

Q. Where were you residing then?—A. 2417 North Ninth Street.

Q. At that time were you employed by this chemical company?—A. Yes, sir.

Q. And you are still there, are you?—A. Yes, sir.

Q. What is the name of the chemical company?—A. Monsanto Chemical Works, Second and Rutger.

Q. That is on the South Side?—A. Yes, sir.

Q. And you live in the north end?—A. Yes, sir.

Q. Now, are you employed constantly by that concern for the last four or five months?—A. For the last year and five months.

Q. Have you been working steadily?—A. Yes, sir; well, I have lost a few days through holidays and now and then get off a day; I have been employed steadily.

Q. Outside of a holiday and a day off occasionally, you have worked steadily?—A. Well, I can't say I did; I have been off a few days for different purposes since I have been working there, business and one thing another.

Q. Outside of holidays, you haven't lost over a half a dozen days?—A. Not on their account.

Q. Not on your own account?—A. Not over half a dozen days, no; I don't think I have.

Q. Are you a married man?—A. Yes, sir.

Q. How much of a family have you?—A. I have three and a wife.

Q. What wages are you receiving?—A. Well, $29 a week.

Q. Twenty-nine dollars a week?—A. Yes, sir.

Q. Of course, you want to work as much as you can and get $29 each week?—A. Absolutely, have to, not what I want to.

Q. You have no independent income of your own outside of what you earn?—A. Not any.

Q. So yourself and family are dependent entirely upon what you earn?—A. Yes, sir.

Q. Are you connected with any political organization?—A. Yes, sir.

Q. May I ask what your politics are?—A. Not any certain one; I vote a split ticket.

Q. Were you connected with any political organization?—A. No, sir.

Q. May I ask you who you voted for for President?—A. Who I voted for for President; I voted for Harding.

Q. Did you vote the straight Republican ticket?—A. No, sir.

Q. Who did you vote for for Congress in the eleventh district?

Mr. Feigenbaum. I submit that is improper. A voter can not be asked who he voted for for anything.

A. Well, of course, I haven't got any certain politics. I don't know as I ever voted a straight ticket in my life.

Q. I am asking you in the eleventh district for Congress. Did you vote for Bogy or Hawes?

Mr. Feigenbaum. I want to say to the witness that there is no objection on our part to saying who he voted for, but he has the right, if he so wishes, to refuse to answer that question; but, as far as the contestant is concerned we have no objection to your answering the question if you wish to.

Mr. Barrett. Have you any objection to stating who you voted for for Congress in the eleventh district?

A. I can not say it is a secret, but I thought that was a man's privilege to keep it to himself if he wants to.

Q. You can do as you please about it.—A. I would much rather keep my own politics to myself.

Q. All right. You voted for Harding?—A. I did for President.

Q. You voted at what hour?—A. Well, I voted in the afternoon.

Q. At what time?—A. Well, I will say 5 o'clock—no, let's see; it was after 3 o'clock, between 3 and 4.

Q. What were you doing prior to 3 o'clock?—A. Just sitting around.

Q. Sitting around where?—A. Sitting around the polling place.

Q. You were around there, then, all day?—A. Yes, sir.

Q. Were you employed by anybody to work there?—A. No, sir.

Q. You were engaged in your usual occupation?—A. No, sir.

Q. Were you docked for that time?—A. Yes, sir.

Q. And that averages about $5 a day, does it?—A. Yes, sir.

Q. And you received no compensation from your employer for that time you were off?—A. No, sir.

Q. You were standing all that time around the polling place?—A. Yes, sir.

Q. You were not interested in any candidate?—A. No, sir.

Q. Or any ticket?—A. No, sir.

Q. Just around the polling place?—A. I was around attending to my own business.

Q. What particular business of your own were you attending to around the polling place that day?—A. I had my duties there to see that things went on as straight as possible, to find out what didn't go on straight.

Q. You were looking then to see that things went straight?—A. I was looking to see what didn't go on straight.

Q. Had anybody requested you to do it?—A. Well, no, personally.

Q. Nobody requested it, you did it voluntarily yourself?—A. Well, no, sir; I never exactly volunteered.

Q. Nobody asked you to do it?—A. No, sir.

Q. You went there of your own volition, did you?—A. The way it was talked around, you know, that they would like to put some watchman.

Q. It was talked around that they would put some watchman; where was the talking around going on?—A. Oh, it was for a month before, I guess, I heard it mentioned several different places. The way I got to get in myself was, I was living at 2417 North Ninth Street there, and another gentleman there, a couple or three doors of me, and he was going down, and he wanted to know if I wouldn't accompany him, that he would get me papers if I would go with him. He said he hated to go by himself, he would be lonesome and they might kick him out.

Q. Who is this gentleman?—A. His name is Mr. Whitehead.

Q. What is his first name?—A. I don't know.

Q. Where does Mr. Whitehead reside?—A. I don't know exactly; I was 2417 and he was about 2413, just a few doors this side.

Q. What street?—A. Ninth Street.

Q. South or north?—A. North.

Q. Now, when did he make this statement to you?—A. Oh, that was several weeks before the election.

Q. Can you give us any idea of the approximate time prior to the election?—A. No, sir.

Q. You haven't any idea?—A. No, sir.

Q. Did he ever speak to you about it on any other occasion or any other place?—A. No, sir.

Q. Did anybody else ever speak to you at any other time or place?—A. No, sir.

Q. So this Mr. Whitehead is the only one that asked you?—A. Personally.

Q. And did he bring you any papers or credentials?—A. They were sent to me.

Q. By whom?—A. Well, I believe the Socialists.

Q. What is Mr. Whitehead's politics?—A. I couldn't tell you that.

Q. You don't know that?—A. No, sir; I don't know even how the man voted.

Q. Is he a Socialist?—A. No, sir.

Q. I understood you to be independent in your politics?—A. Well, I can not say independent.

Q. Are you a Socialist?—A. No, sir.

Q. You take one ticket or the other; do your voting on that; do your scratching?—A. I vote the way I think best.

Q. I say, you take one of the tickets, one of the two major parties—the Republican or Democratic?—A. I vote one or the other, not both of them; I scratch one of them.

Q. You scratched your ticket at the last election, did you?—A. Certainly.

Q. And you did your voting on the Republican ticket, did you?—A. I voted both ways.

Q. Well, I say, did you do your voting on the Republican ticket or the Democratic ticket?—A. I voted some.

Q. On the Republican ticket?—A. Yes, sir.

Q. And the scratching you did was made on the Republican ticket?—A. It was made plain everything I scratched.

Q. Your scratching was made on the Republican ticket; you didn't do your voting on the Democratic ticket?

Mr. Feigenbaum. I advise you that you have a right to refuse to answer that if you want to do it. I don't care whether he answers it or doesn't answer it.

A. Well, I thought I wasn't up here for a witness to tell how I voted. I didn't understand it that way. I may be up here on another occasion.

Mr. BARRETT. Then, you refuse to disclose for whom you were representing that day that you were working there?

A. I don't exactly refuse to, but I should think a fellow would not be compelled to tell how he votes. I never did hear of it being done only in crookedness.

Q. I asked you at the very outset if you had any objections to telling who you voted for for President and you answered Harding.—A. I told you that; yes, sir.

Q. Then, when you got down to the eleventh district for Congress, you refused to disclose how you voted, although you had told us who you voted for for President. Now, do you still refuse to disclose how you voted for Congress, notwithstanding you told us how you voted for President?

Mr. FEIGENBAUM. You are not compelled to answer that.

A. Well, that is the reason I didn't answer it, because I wasn't compelled to.

Mr. BARRETT. You are willing to tell who you voted for for President but not for Congress?

A. I voted for Mr. Harding for President.

Q. You are willing to tell that but you are not willing to tell who you voted for for Congress; is that right?—A. Well, I think that one is enough for me.

Q. I say, you are unwilling to tell who you voted for for Congress?—A. Oh, I think I will keep it to myself.

Q. Now, I will ask you if you voted for Mr. Bogy?—A. I have refused to answer that question once. These two gentlemen, one is the same to me as the other; one man looks as good as the other. They are both running, and if they get by with it I don't blame them.

Q. Have you any objections to stating who you voted for for Congress?—A. Only one man, I stated, who I voted for, and that is enough; that is for President.

Q. Do you refuse to disclose for whom you voted for any office except that of President? Answer that question yes or no.—A. I refuse.

Q. All right. Now, then, getting back to Brother Whitehead. Did you have any other talks with him other than that several weeks prior to election?—A. No, sir.

Q. Did you ever have any talk with anybody else?—A. No, sir.

Q. Now, did you attend any Socialist meetings?—A. No, sir; never was at a Socialist meeting in my life.

Q. Did you attend any Republican meetings?—A. I attend all those; I attend Republican and Democrats, all I could get into.

Q. That is, public meetings?—A. Sure.

Q. Did you attend any ward or precinct meetings?—A. Not at present.

Q. Do you know who the ward committeeman is of the Republican city committee for the fourth ward?—A. No, sir; I never met the boys before in my life until I went down that day.

Q. Do you know who the Democratic committeeman of the fourth ward is?—A. No, sir.

Q. Do you know any of the precinct workers on your particular side, either Republican or Democrat?—A. I know one or two of the boys down there.

Q. Who do you know?—A. Well, a fellow named Diamond—one of the Diamond boys.

Q. What is his first name?—A. I believe it is Bob Diamond.

Q. D-i-a-m-o-n-d?—A. I don't know whether that is it; the brother or one of them stutters, and the one that stutters wasn't on the job; that's the way I know there are two of them.

Q. What is his politics?—A. He is a Republican.

Q. What other precinct man do you know?—A. That's the only one.

Q. Do you know any of the Democratic precinct workers?—A. No, sir.

Q. Do you know any Democratic judges and clerks that you saw at the polling place?—A. Not personally.

Q. You don't know them?—A. I said, no, sir.

Q. Do you have a speaking acquaintance with any of the Republicans, judges or clerks, Democratic judges or clerks except Mr. Diamond, who is a Republican?—A. No, sir.

Q. And the only man who spoke to you about going to the polling place on election day was Mr. Whitehead?—A. Yes, sir.

Q. And it was not suggested you go there by anybody at any time except Mr. Whitehead?—A. As a personal favor to him.

Q. Were you to receive any compensation for your services there that day at the polling place?—A. No, sir.

Q. Nobody paid you?—A. No, sir.

Q. Did Mr. Whitehead ever speak to you after that time which you say was some weeks prior to the election?—A. Speak to me since?

Q. You said he spoke to you several weeks prior to the election?—A. Before the election?

Q. Yes; the first time?—A. Yes, sir.

Q. Did he ever speak to you after that?—A. Well, we met and talked.

Q. When?—A. Different times.

Q. I ask you if Mr. Whitehead ever spoke to you at any other time or on any other occasion about you going there and acting on election day. You said no. I want to get that clear, if you haven't understood my question; that is why I am asking you the question again.—A. About two or three weeks before the election he asked me if I would go with him.

Q. Where did this conversation take place?—A. I met him on the street, on Ninth and North Market.

Q. What did he say on that occasion?—A. Just in regard to conversation about the election, and he said that he was appointed as a watchman, I believe.

Q. A watchman?—A. Yes, sir; and he said he would like to have a companion, and he wanted to know if I would go with him.

Q. You mean private watchman?—A. Well, not private; no certain party; one just as much as the other.

Q. I see; he was appointed a watchman for one party or the other?—A. No certain party.

Q. He was a Socialist, wasn't he?—A. Well, I think Mr. Whitehead is a Socialist.

Q. So you were there that day?—A. Yes, sir.

Q. And part of the time you were sitting on the box; where was that box sitting?—A. Sitting on a box?

Q. I understood you to say you were sitting on a box.—A. I didn't say anything about a box at all.

Q. Where was the polling place located?—A. On Broadway; I believe it is in the twenty-two hundred block.

Q. Don't you know the number?—A. No, sir; I don't exactly; I don't believe I know the number.

Q. On what side of the street?—A. West side of the street in a pool room—Vacation Pool Room.

Q. Between what two streets?—A. I believe it is between Clinton, and I don't know what street.

Q. Is this polling place north or south of Clinton?—A. I believe it is north of Clinton.

Q. It is on the west side of Broadway and north of Clinton.—A. Yes.

Q. Where were you stationed at on election day—north or south of the polling place?—A. I was on the inside.

Q. You were on the inside all of the time?—A. Yes, sir.

Q. All day long?—A. Yes, sir; absolutely.

Q. Were you at night when they were counting the ballots?—A. I was there until after 12 o'clock; about 1 o'clock when I left there.

Q. What time did you go in the polling place?—A. I went there about 9 o'clock in the morning.

Q. And you stayed there until 12 o'clock at night?—A. After 12—between 12 and 1.

Q. You were inside all the time?—A. Yes, sir.

Q. Where were you seated with respect to the table on which the ballot boxes were placed?—A. I was seated part of the time on the south side of the table and part of the time on the north.

Q. How far west was that from the door?—A. About 15 feet.

Q. Now was the door on the south or the north side?—A. On the southeast corner.

Q. Southeast corner of the room. What kind of a window was there there?—A. A kind of a large window by a cigar case.

Q. Cigar case in the window?—A. Close to it.

Q. Anything else in the window?—A. I didn't notice.

Q. Was the business of that place being conducted on that day?—A. No, sir; I didn't see any.

Q. Anybody buy any cigars?—A. Well, not inside. I seen some of the boys come in and buy once or twice—that is, outsiders.

Q. Outsiders would come in and buy a cigar or a cigarette?—A. Yes, sir.

Q. So the business of this place was being conducted at the same time the election was going on?—A. In that cigar business.

Q. I am not speaking of the pool table; cigars and cigarettes?—A. Yes, sir.

Q. People coming in and out and buying?—A. Strangers.

Q. People coming in and out to buy tobacco, or pipes, or anything in that line?—A. Yes, sir.

Q. Which way did the line extend from the polling place, north or south, when they formed in line to vote?—A. Outside?

Q. Yes.—A. Well, part of it stood up on the south, and part of the time on the north. The way it happened at the door, not exactly no strong line either way.

Q. No fighting going on there?—A. No, sir.

Q. Everybody that wanted to vote that was entitled to vote was permitted to vote? So far as you could see it was a peaceful and orderly, quiet election?—A. Getting along peacefully.

Q. You were in there from 6 o'clock in the morning?—A. About 9 o'clock.

Q. From 9 o'clock you had no opportunity to see what was going on outside?—A. Only when I went to the big window. I never sit down all the time. Occasionally go to the door when not busy.

Q. You were watching inside and outside, too?—A. I didn't have any particular watching on the outside done. When they were busy I was right close to the table.

Q. Didn't you exhibit any papers to those election officials?—A. Never had a paper in my hand all day, only my ballots.

Q. Did you tell them what you were doing there?—A. Yes, sir.

Q. What did you tell them?—A. I told them I was a watchman there.

Q. Did you tell them for what party?—A. I didn't tell them for any certain party.

Q. They permitted you to stay there?—A. Yes, sir.

Q. Stay as long as you liked?—A. Yes, sir.

Q. Was there anybody else there watching besides you?—A. Mr. Whitehead.

Q. A Socialist?—A. I don't know just exactly what he is.

Q. Was anybody else besides you two men watching there?—A. Not that I know of or saw.

Q. There were two Republican judges and two Democratic judges and a Republican clerk and Democratic clerk, that made six?—A. Yes, sir.

Q. And you yourself and Mr. Whitehead made eight?—A. I never counted; I know there was two of us.

Q. Did you see anybody else besides these two clerks and the board judges?—A. I seen the judges were all generally working there.

Q. And the police officer?—A. Part of the time saw him.

Q. On the outside of the polling place so far as you observed, you didn't see any officer, did you?—A. No, sir.

Q. You noticed vehicles would come up and come down bringing voters to and from the polls?—A. I can't say they brought voters to vote; I noticed a couple of machines come up there and I noticed a couple of them get out.

Q. You say you saw some of the machines there with Hawes banners on?—A. Yes, sir—one.

Q. Did you see them driving around any place there with people in them?—A. No, sir.

Q. I thought you said you saw two machines?—A. There were two machines drove up there and stopped.

Q. Anybody get out?—A. Two got out of the machines that had the banner on and went in the saloon and came back in and voted.

Q. Went out and got in the machine and drove away?—A. No, sir; the machine drove away before they voted.

Q. Was that the only way you saw the machines there?—A. Yes, sir; those two machines.

Q. During the time you were watching there, did you see anybody vote there that you believed had no right to vote there?—A. Why, no.

Q. So far as you know, they were all entitled to vote?—A. Yes, sir.

Q. And so far as you know, every man that voted, his ballot was put in the box?—A. Yes, sir.

Q. And so far as you know, every vote that was put in that box was counted that way?—A. Well, they opened an amendment box; it had a few votes mixed in with it.

Q. Before the returns were made out?—A. Yes, sir.

Q. They were counted out in your presence?—A. Yes, sir.

Q. You never made any objection to any inaccuracy?—A. Only a few votes after the amendment box was opened and poured on the table, and we found a few in that, and several where they witnessed and counted them.

Q. Where they counted them?—A. Yes, sir; 15 counted; and some of the gentlemen carried them to the other table, laid them down, and when they came back to put them with the other ballots there were nine missing.

Q. In what precinct was that?—A. Second precinct, fourth ward.

Q. Is that all?—A. That is as far as I know to be a positive fact.

Q. Now, outside of that proposition you didn't find any improper conduct of any kind there, did you?—A. No, sir.

Q. Did anybody see you or talk to you about your testimony in this case?—A. No, sir.

Q. Did you give your name to anybody?—A. No, sir.

Q. Has Mr. Whithead talked to you about this case at all?—A. Before going in there is all.

Q. I am talking about testifying in this election contest as a witness here.—A. No, sir.

Q. Nobody talked to you about your testimony before you came here?—A. No, sir.

Q. Saw nobody?—A. What do you mean, in the way of voting, or what?

Q. I mean in the way of testifying here as a witness?—A. Oh, no, sir.

Q. How?—A. No, sir.

Q. Nobody talked to you?—A. No, sir.

Q. Mr. Bogy nor none of Mr. Bogy's friends spoke to you about it?—A. No, sir; not as I know of; don't know none of them.

Q. All you know you were subpœnaed as a witness to appear here?—A. Yes, sir.

Q. So far as you could see on the outside, everything was conducted orderly and quietly?—A. As far as I saw from the door and window at which I was standing at the time.

Mr. Hawes. How old are you, Mr. Rhodes?—A. Thirty-five years old my last birthday.

Q. Haven't you affiliated yourself with any political party?—A. No, sir.

Q. You never called yourself a Democrat?—A. I never did—well, not in this city.

Q. Not in this city?—A. No, sir.

Q. Did you ever call yourself a Republican?—A. No, sir.

Q. Did you ever call yourself a Socialist?—A. No, sir.

Q. You are a member of no political party?—A. No, sir.

Q. You went to this polling place at the invitation of a Socialist?—A. I got in on the papers of a Socialist.

Q. So that you were then, as a matter of fact, with the commission issued by the Socialists representing the Socialists as a watcher in that precinct?—A. Yes, sir.

Q. So that you were representing the Socialist Party as a watcher in that polling place, is that right?—A. I went there under that paper; yes, sir.

Q. And acted as a watcher and challenger for the Socialist Party?—A. Well, I didn't know none; I was watching all. I wasn't watching for the Socialist Party. I was watching one the same as the other.

Q. You went there as the representative with a commission from the Socialist Party?—A. Yes, sir; with the papers.

Q. This election was held in a pool room and cigar store?—A. Yes, sir.

Q. Nobody played pool?—A. No, sir.

Q. But the cigar store was operated?—A. It seemed to be.

Q. Sales went on during the day? —A. I seen a few.

Q. You saw no disorder inside of the polling place?—A. No, sir.

Q. Did you see any disorder outside of the polling place?—A. No, sir; I never saw no disorder of any kind; some of them seemed like a little full of whisky or something like that, a little loud or something, and some of them had to shut them down; that is about all.

Q. Do you know the names of any of the judges and clerks?—A. Not personally; no, sir.

Q. You don't know the Republican committeeman in that ward?—A. No, sir; I didn't know any boys in there personally.

Q. You don't know any of them?—A. No, sir.

Q. You spoke a while ago, I believe, Mr. Rhodes, of people soliciting votes for Hawes. Do you know whether they were Democrats or Republicans?—A. I couldn't say.

Q. You don't know whether the solicitations were made by Republicans or Democrats?—A. No, sir.

Q. Now, after the election, whom did you tell about seeing this dinner money on the table?—A. I never told any one personally. I and Mr. Whitehead was only the ones had any personal talks about it at all.

Q. Did you speak to Mr. Bogy or Mr. Hartmann, his counsel, about this testimony?—A. Never saw Mr. Bogy, I think, before to-day in my life.

Q. Whom did you speak to about your testimony?—A. I don't know as I spoke to any personal one.

Q. Well, you must have made a report about seeing this dinner money on the table.

Mr. Feigenbaum. I object to what he must have done. He said he didn't talk to anybody, and he is here on subpœna. If he has spoken to me, I would like to know it. They have been over this cross-examination and it doesn't bring out any new facts.

Mr. Hawes. I submit that the cross-examination which I have undertaken in conclusion has shown very material facts. It is not a waste of time. It has disclosed the facts that this gentleman was a watcher for the Socialist Party.

Q. Do you know a man named Hartmann?—A. I know of him.

Q. Have you met Mr. Hartmann since the election?—A. I believe I met him a couple of times with some other boys that he was with—not personally by myself.

Q. Since the election?—A. Yes, sir.

Q. In Mr. Hartmann's presence, did you tell about seeing this dinner money on the table?—A. Well, we had been talking it over, several of us, not only I and Mr. Hartmann personally; no.

Q. But you discussed it?—A. I mentioned it probably more than once, maybe, being talking.

Q. In Mr. Hartmann's presence, you mean?—A. Well, he was in the presence; yes.

Q. Do you know what Mr. Hartmann's politics are?—A. No, sir; I don't know the man personally.

Q. And do you know that he is head inspector for Mr. Bogy in this contest, collecting evidence for him?—A. Do I know it? I do not.

Mr. Feigenbaum. I want to say now that he is not any inspector for Mr. Bogy at all—not engaged by Mr. Bogy as inspector or otherwise.

Mr. Barrett. That leads to a question I have overlooked. Speaking about that money you saw on the table, you didn't see anybody hand it to anybody, did you?

A. No, sir; it was not handed to anyone—all the time that moved—was moved—was right around 12 o'clock at night before the polling place closed. There was one man standing to the northeast corner of the table, next to the door that has a little gate that goes around behind the cigar stand. He takes a pocketbook out of his pocket, and there was a $10 bill lying there; he makes change and lays the money back down on the table. One of the boys made the remark, "What the hell you want to monkey with that money for?" He says, "Well, it has got to be made in change, though." He never made no silver change; it was all paper money.

Q. Do you know who put the money there?—A. No, sir.

Q. Do you know who took it away?—A. It was not taken away; nobody put their hands on it as long as I stayed there.

Q. Were any meals served there?—A. Some sandwiches somebody said brought in there.

Q. Coffee?—A. I couldn't say whether coffee or not. I never got any of the three or four sandwiches.

Q. That was at the noon hour?—A. All hours.

Q. It was during the course of the day all along?—A. Part of it.

——— ———.

Subscribed and sworn to before me this — day of ———, 1921.

Frank B. Grodzki,
Notary Public.

My commission expires September 9, 1921.

Mr. Feigenbaum. I want to say now before we go ahead, there are about seven or eight witnesses and we are trying to expedite them. If contestee and his counsel state they want to help us, I would appreciate it if he would do so. I am only taking a few minutes of my direct examination. You have a right to cross-examination as long as you want. I would like to get through with those witnesses so as not to conflict with other witnesses.

Mr. Hawes. I will say we are willing to work straight through the noon hour and into evening, if necessary, to accommodate contestant; and that the delay in cross-examination is due largely to the introduction of irrelevant matters.

JOHN H. HELSER, of lawful age, being produced, sworn, and examined, on the part of the contestant, deposeth and saith:

Direct examination by Mr. Feigenbaum:

Q. State your name in full.—A. John H. Helser.

Q. Where do you reside?—A. 1400 North Eleventh Street.

Q. What precinct and ward is that in?—A. Well, I don't know exactly the number of the precinct. but I think it is five; it is located between Tenth and Eleventh on Cass Avenue on the south side of the street.

Q. That is the fourth ward, isn't it?—A. Yes, sir.

Q. Is that the fifth precinct in the fourth ward?—A. I don't know really the precinct.

Q. Is that next to Mr. Grotske's office?—A. I don't know Mr. Grotske at all.

Q. How long have you lived in that district?—A. I have been in that place there since the 3d of July.

Q. Of 1920?—A. 1920; yes, sir.

Q. Did you register in that precinct as a voter?—A. Yes, sir.

Q. On the 2d of November, 1920, at the last general election, did you go over to cast a ballot?—A. Yes, sir.

Q. Are you married?—A. Yes, sir.

Q. You live with your wife and family?—A. Yes, sir.

Q. Did your wife also go there?—A. No, sir.

Q. What time of the day did you go there? A. Well, I was there just at the time she was opened up, just a few minutes before 6 o'clock.

Q. What time did you get into the polling place?—A. I got in as soon as they opened up.

Q. What occurred in there with reference to your voting, or your attempting to vote; whatever occurred?—A. When I went in there, when my turn come, Fish McAdams walked up to me. he says, "You vote that ticket straight." I says, "I sure will." A fellow asked, "What's your name?" I says. "Helser." "Where do you live?" I says, "1400 North Eleventh Street." and I called for my ballot and another fellow asked me, "What you say your address is?" and I says, "1400 North Eleventh Street." Just then I heard Fish McAdams say, "He votes a Democratic ticket." When I turned around a fellow had my ticket and rolled it up and put it in the box and give me a little constitutional ballot.

Q. They didn't give you the candidates ballot at all?—A. No, sir.

Q. Did you tell them you wanted to vote the Democratic ticket?—A. I didn't tell them either.

Q. Did you intend to vote a Democratic ballot?—A. No, sir; I always have been a Republican.

Q. Your intention was to vote the straight Republican ticket. if you care to say that?—A. Yes, sir.

Q. You understand you may answer these questions if you wish, and if you do not, you may refuse. Did you tell them you intended to vote a straight Republican ticket?—A. No, sir. Well the reason I didn't I was afraid of the gang there—what will it do.

Q. Who do you refer to there as a gang?—A. There is a political gang, Fish McAdams's gang I am afraid of.

Q. He is a Democrat?—A. From what I hear, he is.

Q. Was he acting as judge of election?—A. I couldn't tell you. Fish McAdams was standing about 3 feet away from the ballot box.

Q. You don't know whether he was a challenger in that precinct?—A. I don't know anything about that.

Q. You know he is a Democrat?—A. From what I hear.

Q. Who was it that put your ballot in the box?—A. I don't know; he is a great big tall fellow.

Q. One of the judges or clerks?—A. I guess he was; he was behind the table.

Q. Did he ask you which ballot you wanted?—A. No, sir.

Q. Did he offer to give all the ballots?—A. No, sir.

Q. You didn't get any?—A. No, sir. He took it himself.

Q. Who took it?—A. This man. He folded it up. I heard Fish McAdams tell him, say, "He votes the Democratic ticket." When I turned around he had my ballot and putting it in there.

Q. Were you there very long?—A. There were four persons ahead of me; I was the fifth.

Q. Did you see any similar acts in reference to the others?—A. I did.

Q. What was done with the others?—A. The other was a colored woman and a man, presume it was his wife. They started in on her. She says. "Never mind; give me that ballot here. I knows what I'm doin'."

Q. What did they say to her?—A. They didn't say nothing; just handed her the ballot.

Q. Did she ask for any particular ballot?—A. I never heard her.

Q. When she says, "I knows what I am doin'," or words to that effect, did they refuse to give her a ballot?—A. Well, it looked to me—I don't know exactly for sure whether they did or not, only I heard that remark made.

Q. Now, did you see some of the other voters refused ballots in there, did you?—A. No, sir.

Q. When you said a minute ago the same thing happened to some of the others, what did you mean?—A. Only that colored woman.

Q. That was all you saw with reference to that?—A. That was all I saw.

Q. Then you left, I presume?—A. Yes, sir.

Q. Went home?—A. Yes, sir.

Q. Did you stay around there to see what occurred on the outside?—A. I stayed outside, looked through the window, and I saw Wis McAdams still keep the position right there.

Q. What position was that?—A. Was alongside along of that ballot ticket.

Q. Did you see him do anything particularly to the ballot box?—A. I couldn't see well, because it was cold that morning and the windows were kinda frosty.

Mr. Feigenbaum. That is all.

Cross-examination by Mr. Barrett:

Q. You say the windows were "kinda" frosty?—A. Yes, sir.

Q. You could not see through them very well?—A. No, sir.

Q. So when you were outside you didn't know what transpired on the inside?—A. No, sir.

Q. How long were you inside, altogether?—A. Well, I was inside, I don't know exactly, about four or five minutes or a little longer; I don't know exactly.

Q. Now, you say there was a colored man and his wife came in to vote?—A. They were in front of me; I was right in the rear of them.

Q. There was some remarks made to the colored woman about how to vote, wasn't there?—A. I don't know that. All I heard the colored woman say, she says, "Give me that ballot; I know what I am doin'."

Q. And she took her ballot and prepared it and put it in the box, didn't she?—A. She went in the booth there; that is all I seen.

Q. They gave her the ballot?—A. Yes, sir.

Q. You don't recall any other incident, do you?—A. No, sir.

Q. Was there any disorder in the polling place?—A. No, sir; not that I know of.

Q. You saw none on the outside?—A. No, sir.

Q. Were you around that polling place much of the day?—A. No, sir.

Q. Now, McAdams, you say, said, "He is a Democrat—give him a Democratic ticket"?—A. Yes, sir.

Q. And you made no objection to that?—A. No, sir.

Q. You didn't contradict him?—A. No, sir.

Q. And when that ballot was put in the ballot box you made no protest, did you?—A. No, sir.

Q. You could have made it the same as the colored woman if you had desired?—A. No, sir.

Q. Where were you born?—A. I was born in Russia.

Q. When?—A. November 15, 1872.

Q. November what?—A. Fifteenth.

Q. 1872?—A. Yes, sir.

Q. When did you come to this country?—A. In 1887.

Q. Are you naturalized?—A. Yes, sir—well, I didn't have to be naturalized; I came here and raised here from 15 years old; but I took a naturalization out.

Q. When?—A. When I came out of the Army in 1895, when William Jennings Bryan was at that time a candidate for President, and I wanted to vote, and I was told I had to get naturalization papers.

Q. You were in the Spanish-American War?—A. Yes, sir.

Q. You got naturalization papers at that time?—A. Yes, sir. And I went up to the court of appeals before the judges. They asked me was I in the Army, and I had my discharge, and he said, "Very good discharge; you have been shot?" "Yes, sir; I have been wounded"——

Q. That is the time you were naturalized?—A. Yes, sir; and they told me I had to have it.

Q. You know Mr. Hartmann?—A. I don't know him personally; I heard of him; I meet him once in a while.

Q. Did you have any talks with him?—A. No, sir.

Q. Did anybody else have a talk with you in his presence?—A. No, sir.

Q. When is the last time you saw him?—A. The last time I saw Mr. Hartmann is about four or five days ago—last week some time.

Q. Last week where?—A. I think the last time was when I saw Mr. Hartmann right here in Mr. Feigenbaum's office.

Q. You have been in this office before?—A. Yes, sir.

Q. When were you here?—A. Me and Mr. Hartmann were here.

Q. Mr. Hartmann bring you here?—A. Yes.

Q. Mr. Hartmann introduced you to Mr. Feigenbaum?—A. Yes, sir.

Q. When was that?—A. That was last week.

Q. Now, did you make any complaint about Fish McAdams or anybody else about their conduct on election day?—A. No, sir.

Q. Made no complaint to anybody?—A. No ,sir.

Q. Said nothing until you came up here to see Mr. Feigenbaum?—A. Why, I spoke to Mr. Hartmann about that.

Q. You spoke to Mr. Hartmann?—A. Yes.

Q. When?—A. Oh, that was some time ago; I don't know when; he come and asked me whether I know anything about this, and I told him yes; just what I said here.

Q. Nobody threatened you there that day, did they?—A. Where was that?

Q. At the election?—A. No, sir.

Redirect examination by Mr. FEIGENBAUM:

Q. When you were in my office did I say anything to you or just ask you what you knew?—A. You didn't say nothing to me.

Q. Didn't say anything to you except ask you what you knew, and you told me?—A. Yes, sir.

Mr. HAWES. Mr. Hartmann, however, asked you what you knew?

A. This happened before. He asked me whether I knew was there anything done out there, and I told him just what I said here.

——— ———.

Subscribed and sworn to before me this ——— day of ———, 1921.

FRANK B. GRODZKI, *Notary Public.*

My commission expires September 9, 1921.

WILLIAM WHITE, of lawful age, being produced, sworn and examined, on the part of the contestant, deposeth and saith:

Direct examination by Mr. FEIGENBAUM:

Q. What is your name?—A. William White.

Q. Where do you live?—A. 1329 North Tenth Street in the rear.

Q. How long have you lived there?—A. At this address, been there about three years.

Q. Is that the fifth precinct of the fourth ward?—A. As near as I can remember, think it is.

Q. That is, the voting place is up on Cass Avenue?—A. Yes, sir; south side of the street.

Q. Between Tenth and Eleventh Streets?—A. Yes, sir.

Q. Did you register to vote at the last general election?—A. Yes, sir.

Q. Now, on the 2d of November, 1920, at the last general election, did you go to cast your vote?—A. Yes, sir.

Q. What time in the day was that?—A. They laid us off from work about 2 o'clock, I think it was; it must have been about 3.30 or 4 o'clock.

Q. They laid you off from work so you could go to vote?—A. Yes, sir.

Q. Then did you go to the precinct?—A. Yes, sir.

Q. Was there a line there?—A. Well, wasn't no line.

Q. Do you remember what number your ballot was?—A. No. 357.

Q. And that was about 3.30 or 4 o'clock, you say?—A. Yes, sir.

Q. Now, when you got inside, what did you do?—A. I went in the door and a man says, "What is your name?" I told him. "Where do you live?" I told him that. After he taken my name, some fellow had got up from over in the corner and begin to pick up the ballots. And I looked around, expecting for him to hand me the tickets for me to go in the booth and decide which one I wanted. And a man then asked my name. I remember he says, "Well, 357." He stuck whatever it was in the box, and that was all. So I never said anything to them.

Q. Were you given any ballot in your hand?—A. I was given nothing at all.

Q. Constitutional ballot either?—A. No, sir. He told me that was all.

Q. Do you know who this man was that put the ballot in the box, or whatever it was in the box?—A. All I know he picked it up from where they were laying.

Q. Did he have a badge or anything of judge or clerk?—A. I don't know if a judge or clerk. I know he was in the polling place.

Q. Did he say whether you were voting the Democrat or Republican ticket?—A. No, sir.

Q. For the sake of the record, you are a colored man?—A. Sure.

Q. We know that, but that goes in the record; that is the only reason I asked you that?—A. Yes, sir.

Q. You are married?—A. Yes, sir.

Q. You live with your wife?—A. Yes. sir.

Q. You have a family?—A. Yes, sir.

Q. How large a family have you?—A. Three children.

Q. Did your wife register to vote?—A. No, sir.

Q. And she didn't vote?—A. No, sir.

Q. How long were you in that polling place?—A. Just long enough for me to go in there and give them my name and address—about three minutes.

Q. Did you see anything like that happen to anybody else?—A. There was nobody in there only the officials.

Q. Did you see anything else happen, or did you go straight home?—A. Henry Baker lived in that ward; he worked at the city hall. I told him about it, and he said he would see about it. That's all there was to it.

Q. You went and told this man Baker who you understood was a city hall employee?—A. He works there, but during this time he was at this precinct.

Q. At this particular precinct?—A. Yes, sir.

Q. Inside or outside?—A. He was outside talking.

Q. And you came out and told him about it?—A. Yes, sir.

Q. You haven't been up at my office before?—A. No, sir.

Q. You never talked to me about this matter?—A. No, sir.

Q. Do you know Mr. Bogy?—A. The first time I ever saw him.

Q. Do you know Maj. Hawes?—A. No, sir; I saw him the first time this morning.

Mr. FEIGENBAUM. That is all.

Cross-examination by Mr. BARRETT:

Q. Now, Mr. White, you say you went in there, you gave them your name, and he stuck something in the box, and you heard them say it was 357, and they told you that was all?—A. You say I stuck something in the box?

Q. They stuck something in the box?—A. Yes, sir.

Q. That was all that occurred?—A. Yes, sir.

Q. What did you say?—A. I didn't say anything to the officials in there.

Q. Did you tell them you wanted to vote?—A. Did I tell them?

Q. Yes, sir.—A. No, sir.

Q. Why didn't you?—A. Well, my going in there was enough significance to know I wanted to vote.

Q. Why didn't you ask them for a ballot?—A. Well, I didn't see no need to after he done put it in the box. I didn't want to get in trouble.

Q. You didn't make any objection?—A. Not there.

Q. Do you know who this man was that put it in the box?—A. I don't know him personally; I don't know as I could identify him.

Q. When was the first time you made any statement about it?—A. That same day.

Q. To whom?—A. To a fellow named Henry Baker.

Q. Have you ever talked to Mr. Hartmann?—A. No; I don't know him.

Q. Who did you talk to about this case before you came up here?—A. Some fellow that came around in the neighborhood where I live was taking up such as that, and wanted to know if anything went wrong during the time.

Q. That was after the election?—A. Yes, sir.

Q. Can you describe him—a little stout, fat fellow, broad-shouldered fellow, soft hat?—A. Well, he was a little, low fellow, all right; I disremember what sort of a hat he had on.

Q. With a sort of a German accent in his voice?

Mr. FEIGENBAUM. I object to that description.

Mr. BARRETT. All right. How often did you talk with this man that came around?

A. I talked with him than one time that day when he came there.

Q. That was the only time?—A. Yes, sir.

Q. When was that?—A. I couldn't remember what day it was, but I guess it was, as near as I can remember, two months ago.

Q. Weren't you on the outside of the polling place that day?—A. No; I was at home that day.

Q. So you don't know what occurred on the outside?—A. No, sir.

Q. So, all you know is what occurred on the inside a few minutes you were there?—A. Yes, sir.

Q. Nobody assaulted you while you were there?—A. That is the only reason I didn't make any protest.

Q. Why?—A. I have heard of so many fellows getting beat up and I didn't want to get run into that day.

Q. You didn't see anybody offer to hurt you?—A. No, sir.

Mr. HAWES. Have you ever been to this office before?—A. No, sir.

Q. Try and describe that man that was talking to you?—A. He was tall; little taller than I am; I remember that.

Q. Heavy set?—A. I think he was about this gentleman's size. [Indicating.]

Q. Looked like a German?

Mr. FEIGENBAUM. I object to that.

A. I aint saying whether he looked like a German. I know he was a white man.

Q. You mean he was white in color?—A. Yes, sir.

Mr. FEIGENBAUM. You don't claim we had Germans out looking for witnesses?

Mr. HAWES. I want to state, of course, that I had no idea of insinuating that they had Germans, but Mr. Hartmann looks like a German, has an accent, and I tried to identify him in that way by calling the attention of the witness to the description of the man.

Mr. FEIGENBAUM. I might here suggest that the Mr. Hartmann Maj. Hawes refers to is a Frenchman, born in France.

Maj. HAWES. Mr. Hartmann is an Alsatian, I happen to know, and has all the identifications of a German-American.

Q. Can you describe this fellow?—A. He is about 5 feet 4.

Q. Heavier than this man [indicating]?—A. Yes, sir.

Q. You know what a German-American is. Did he talk with a little accent?—A. Well, I didn't pay much attention to that.

——— ———.

Subscribed and sworn to before me this ——— day of ———, 1921.

FRANK B. GRODZKI,
Notary Public.

My commission expires September 9, 1921.

HENRY ROEDTER, of lawful age, being produced, sworn, and examined on the part of the contestant, deposeth and saith:

Direct examination by Mr. FEIGENBAUM:

Q. What is your name?—A. Henry Roedter.

Q. Where do you live?—A. 912 Montgomery.

Mr. BARRETT. The notice served upon the contestee contains the name of Henry Boedter, 912 Montgomery Street. St. Louis, Mo. Now, it appears that the witness is Henry Roedter, and while he is not the same party whose name is furnished us we are not going to make any objection on that ground.

Mr. FEIGENBAUM. If there is any objection, we will furnish a new notice.

Maj. HAWES. We waive any objection in order to expedite the matter.

Mr. BARRETT. In this instance.

Mr. FEIGENBAUM. Where do you live?

A. 912 Montgomery.

Q. You know what ward and precinct that is?—A. Third ward. third precinct.

Q. Is that in the eleventh congressional district?—A. Yes, sir.

Q. How long have you resided in that district?—A. Well, I have been in there, I guess, in September, in October—middle of October will be two years.

Q. Did you register in that precinct?—A. Yes, sir.

Q. Did you vote on the 2d of November, 1920?—A. Yes, sir.

Q. What is your occupation?—A. My occupation—well, I was a machinist's helper at Moons.

Q. Were you around the polling place, that polling place, third precinct, third ward, during the day on the last general election, on November 2, 1920?—A. Yes, sir; I was all day there.

Q. Were you an accredited watcher?—A. Yes, sir.

Q. For what party?—A. I was watching for both the Farmer-Labor and the Socialist Party.

Q. Were you on the inside of the polling place all day?—A. I was on the inside of that polling place most of the day.

Q. Now, tell us in your own way what occurred there that attracted your attention?—A. Well, there was nothing in particular except I noticed in there a few men intimidating a few voters and telling them how to vote. Told them, "Here, don't vote for Mr. Bogy, or don't vote for Mr. Allen, or put Harry Hawes's name down there." And I noticed some of the clerks there even writing down Mr. Hawes's name. and even writing Brogan's name on the ticket.

Q. You saw them write that down before you gave that ticket to the judge or clerks?—A. I saw them before; saw them write it down before.

Q. Were those election judges and clerks?—A. Election judges.

Q. Do you know whether they were Democratic or Republican judges?—A. I don't know exactly whether they were which, but I think they were Democratic judges from the way they acted.

Q. From the way they acted?—A. I know a Republican judge would have boosted for Mr. Bogy instead of Mr. Hawes, and for that I think they were Democratic judges.

Q. Did that happen often during the day?—A. I happened—it started somewhere around 10 o'clock and happened continuously up until about the time the polling place closed.

Q. This occurred continuously from about 10 o'clock until the polling place closed?—A. Yes, sir.

Q. Can you give us any idea how many voters were aswed to vote for Mr. Hawes, or how many voters were given ballots where Mr. Hawes's name was written in?—A. Well, I could not say how many ballots Hawes's name was written in, but I could estimate it somewheres around what I noticed there. Of course, I stepped out a couple of times during the daytime, but I estimate it about 30—35.

Q. Anything else?—A. I noticed most of them were negroes and women.

Q. Now, when you say they were intimidating the voters, just what do you mean by that?—A. Well, "intimidating," as far as I know, what I would call "intimidating," somebody would go to work and say, "Well, I'm going to do it if I'm wrong," or do anything else—somebody talk me into doing something else.

Q. Well, do you mean that these judges or clerks would talk to the voters and tell them to do something else than what they were intending to do while voting?—A. Yes, sir.

Q. Is that what they were doing?—A. Yes, sir.

Q. Would a man take his ballot into the booth?—A. Do it before he would take his ballot into the booth.

Q. What would he say to him?—A. Well, to vote for Harry Hawes; those were two particular men they had—Harry Hawes and Mr. Brogan.

Q. You know Mr. Hawes when you see him?—A. I wouldn't know him; I never met him.

Q. But you know they were using the words, "Vote for Hawes and Brogan"?—A. Yes.

Q. Do you know Mr. Bogy?—A. I don't know; only met him one time at our club. That is the first time I ever saw him.

Q. He made a talk at the club, and you saw him there?—A. Yes, sir.

Q. Did he talk to you about what you are going to testify here?—A. No; never told me what to testify here.

Q. Did I talk to you at all?—A. No.

Q. Who did you talk to, if anybody, about what you heard?

Mr. Barrett. Are you going to cross-examine the witness?

Mr. Feigenbaum. No, sir.

Mr. Barrett. You haven't yet?

Mr. Feigenbaum. No.

Q. Do you know what occurred on the outside of the polling place?—A. They had women out there. I went in there. They fooled me. They said, "Oh, Harry Hawes is going to be elected; Bogy is not going to be elected."

Q. That he was going to be elected?—A. No; Harry Hawes going to be elected.

Mr. Hawes. This is Mr. Hawes.

A. First time I ever met you. I ain't got nothing personal against Mr. Hawes.

Mr. Feigenbaum. You haven't got any personal grudge against him.

A. No, sir.

Q. You say many of them were saying "Harry Hawes was going to be elected." Was that right in front of the door?—A. Right across the street from the place. Some of these women were inside of the polls.

Q. Did they say it to the voters?—A. They bring them into the polls, and I guess they told them how to vote.

Q. They brought them in machines?—A. As far as the law is, the way I understood the law was——

Mr. Barrett. I object to his conclusion.

Mr. Feigenbaum. What did you say?

A. As far as the law was concerned, I understand a man must be 100 feet from the polls in order to tell anybody how to vote.

Q. I do not think that will be questioned. Wasn't that being done?—A. They were brought right into the polls.

Mr. Barrett. I insist on some order. Let the witness describe the facts.

Mr. Feigenbaum. You said women were brought into the polling place by others?

A. Yes, sir.

Q. Was anything said to them?—A. Not as I know of; might have been said outside.

Q. What you don't know, don't testify to, just what you personally know.—A. Yes, sir.

Mr. Feigenbaum. That is all.

Cross-examination by Mr. Barrett:

Q. Now, Mr. Roedter, you were a watchman there for the Socialist Party and the Farmers-Labor Party?—A. Yes, sir.

Q. Did you have any written credentials issued by this organization?—A. Yes, sir.

Q. You were representing both?—A. Yes, sir.

Q. What time did you go there in the morning?—A. I went there in the morning about 6 o'clock, and I voted there; and then I went in there about 9 o'clock and stayed until about 12; and then I stayed in the rest of the afternoon.

Q. You stayed there until closing time?—A. Yes, sir.

Q. Were you there while they were counting the ballots?—A. I was there while counting the ballots. I left the next morning. They were done counting the ballots at 2 o'clock.

Q. In other words, you stayed there while counting the ballots, and they concluded and took the boxes and returns away?—A. Yes, sir.

Q. Now, was there any other person in there besides yourself watching in there?—A. There was a Socialist in there watching besides myself, and I believe there was a Republican and a challenger and a Democratic challenger.

Q. Nobody objected to your being there all day, did they?—A. No, sir.

Q. Nobody threatened you, did they?—A. No, sir.

Q. Didn't hear anybody threaten any of the voters?—A. No; I didn't hear anybody threaten any voters, nor didn't say so.

Q. As far as you could see and observe during the entire time would you say that election was conducted peaceably, orderly?—A. Yes, sir.

Q. And on the outside, so far as you could see, it was peaceful, quiet, and orderly?—A. I think so.

Q. Now, you used the word "intimidate" a while ago. By that you meant that somebody would ask a voter to vote for Hawes or Brogan?—A. Yes, sir.

Q. There was no force used, was there?—A. No.

Q. No violence?—A. No.

Q. No threats?—A. No, sir.

Q. In other words, it was just persuasion?—A. Persuasion.

Q. You understand the words "intimidation" and "persuasion" to mean the same thing, don't you?—A. I think it means the same thing.

Q. That is your idea of it. Where were you born?—A. I was born in St. Louis, right up in the neighborhood of Chain of Rocks; at that time it was part of the county, but it is part of the city now.

Q. How old are you?—A. Forty-six years old.

Q. How long have you lived in the third precinct of the third ward?—A. Two years around the middle of October.

Q. Where was that polling place located?—A. Ninth and Warren.

Q. On what corner?—A. On the northeast corner.

Q. Do you have any objection to stating what your politics are?

The Notary Public. You can answer that if you want to.

A. My politics?

Mr. Barrett. Yes.

A. Well, I have been a Republican all my life, except this last election I voted the Farmer-Labor ticket.

Q. Voted the Farmer-Labor ticket straight?—A. Straight; yes, sir.

Q. You say there was some women and Negroes that they were soliciting these votes from?—A. Yes, sir.

Q. Did the women or the Negroes make any objection to it?—A. One of them did kinda object; told him he could vote his own ticket. Says, "Better vote for that man, he is a better man," and at last he concluded to vote for him.

Q. In other words, they were arguing with him and persuading him?—A. Yes, sir; arguing with him and persuading him.

Q. There was no fussing or fighting?—A. No.

Q. You didn't have much chance, of course, to see anything on the outside; you were inside all day?—A. I wouldn't have anything to do with them outside.

Q. So far as you could see that election that day, the counting of ballots, everything was regular and orderly. You have no complaint to make except about this soliciting votes on the inside?—A. That is all.

Mr. Hawes. You know Mr. Hartmann?

A. I seen him once or twice over at our meetings; otherwise I don't know him personally.

Q. He was supporting the Farm-Labor ticket in that district, was he not?—A. Mr. Selser and he was; Hartmann, I believe, was one committeeman—not in that ward; Selser was supporting it in that ward.

Q. But Mr. Hartmann is connected with the Farm-Labor organization?—A. As a committeeman.

Q. He is a committeeman of the Farm-Labor Party?—A. He was supporting it in the twenty-seventh ward. That is in a different ward than I am.

Q. He was committeeman of the Farm-Labor Party in the twenty-seventh ward?—A. Outside of my district.

Q. Have you talked to Mr. Hartmann since the election?—A. No; not personally.

Q. Who did you make your report to about this persuasion inside of the polling place?—A. I never made my report to anybody. I kept everything to myself until I was called as a witness.

Q. Who brought you here as a witness?—A. I don't know the man's name; some fellow handed me a slip in the yard where I am living. I have got the paper in my pocket.

Q. You know Mr. Hartmann personally?—A. Not personally; only just by sight; just like I meet you now on the street I would know you by sight, too.

Q. Did you hear of any trouble or disorder in any of the polling places in the third ward?—A. None as I know of.

Q. Did you hear of any disturbance of the peace?—A. I didn't hear any.

Mr. FEIGENBAUM. I move that be stricken out as hearsay.

Mr. HAWES. Your organization has a committeeman for the third ward?

A. Yes, sir.

Q. Who is the committeeman for the Farm-Labor Party?—A. Jim Selser.

Mr. FEIGENBAUM. I object to that line of questioning.

Mr. HAWES. Has the Republican organization a committeeman in the third ward?

A. I believe they have; I believe that is Mr. Bishop, or the fellow before him, Umbright.

Q. There was a Republican watcher in that precinct, too, was there not, as well as for your organization?—A. Yes, sir.

Redirect examination by Mr. FEIGENBAUM:

Q. Did you see any machines drive up in front of the polling place with any banners?—A. Banners?

Q. Signs or any names.—A. I seen "Hawes" drive by the place.

Q. Did it stop in front of the polling place?—A. "Brogan" stopped in front of the polling place; came in there, and I happened to get a cigar from Mr. Brogan and he happened to ask me if I was a Democrat, or I would not have got a cigar?

Recross-examination by Mr. HAWES:

Q. Let's settle one question. There was no long line outside of the polling place?—A. No. The longest line outside of the polling place was early in the morning—workingmen trying to get in—and late in the evening.

Q. And anybody could have driven up in a machine, let the voter step out, go in to vote, and the machine move on?—A. Move on; yes.

Q. You have been to other elections, haven't you, in this city?—A. Yes.

Q. Isn't it customary for machines to drive up, or wagons to drive up, and the voters to get out, cast their vote, and then the wagons move on?—A. Yes.

Q. Is there any difference in your mind between a man going to the polling place in a machine and getting out and voting or walking to the polling place?—A. No difference whatever.

——— ———.

Subscribed and sworn to before me this ——— day of ———, 1921.

FRANK B. GRODZKI, *Notary Public.*

My commission expires September 9, 1921.

Thereupon, at 1.05 p. m., a recess was taken until 2 p. m. of this day, at which time the taking of depositions was resumed as follows:

GEORGE F. NICTER, of lawful age, being produced, sworn, and examined on the part of the contestant, deposeth and saith:

Direct examination by Mr. FEIGENBAUM:

Q. Will you please state your name in full?—A. George Frederick Nicter.

Q. Where do you live?—A. 5346 Maflitt Avenue.

Q. What ward and precinct?—A. Twenty-seventh; fifteenth.

Q. What is your occupation?—A. Clerk.

Q. For whom?—A. I am not employed just now; I was with the General Motors.

Q. Were you engaged as a watcher for Mr. Bernard P. Bogy in the recount recently held at the board of election commissioners?—A. Yes, sir.

Q. Mr. Nicter, I think you said that you were employed as a watcher for Mr. Bogy during the recent recount?—A. Yes, sir.

Q. Do you recall instructions being given to various tables as the outset of the recount?

Mr. BARRETT. Are you going to try to show any different than what was testified to by Commissioners Buder and Arnold? I want to say at this time if this witness is offered for the purpose of impeaching, or trying to impeach, the testimony of the witnesses Buder and Arnold. I want to object to it.

Mr. FEIGENBAUM. I am not offering to impeach the witnesses; offering to show what occurred there in the office; nothing testified as yet on this point.

Q. Do you recall during the progress of the recount Mr. Vincent Dempsey, one of the election commissioners, making an announcement in the large hall addressed to the clerks and judges, that they were to keep no track of scratched ballots?

Mr. Barrett. I object to you constantly leading your witnesses, putting the answer in the mouth of the witness. It is highly improper. Give the time and place and let the witness testify as to what was said and done. I want now at this time to protest against your suggestion, and, in addition to doing that, changing your question so as to give him a lead.

Mr. Feigenbaum. Ah, well, the examination hasn't been conducted altogether—questions haven't been put as they should be by contestee's counsel. I am trying to call the witness' attention to facts and hav him testify as to them.

Q. Now, Mr. Nieter, do you recall any statements made by Mr. Dempsey with reference to keeping any track of scratched ballots?

Mr. Barrett. I want to object to that because that will be purely hearsay, and Mr. Dempsey can testify to what was said and done. He is a commissioner, and he is subpœnaed as a witness on behalf of contestant. He was present yesterday in response to the subpœna at the board of election commissioners' office waiting to be called upon as a witness. Mr. Dempsey is the best witness himself to testify to what was done. You try to bring out by this witness what was purely hearsay and I therefore object to it.

Mr. Feigenbaum. It is perfectly proper to introduce this witness to show what took place. We are undertaking to produce witnesses whom we believe will testify to the facts, as to the fairness of the recount, and what occurred in the board of election commissioners' office, and as to how far the contestant was permitted to keep records to which he was legally and justly entitled to, and we will undertake to prove this by the present witness.

Mr. Barrett. I submit, in view of the statement made by counsel for contestant, it shows the animus of contestant and his counsel, and the unfair method used in attacking the validity and honesty of the count, and particularly of the board of election commissioners in refusing to put one of them on the stand and trying to prove by some other witnesses what he said or did. And you haven't placed any time of the conversation, the day and the dates.

Mr. Feigenbaum. Read the last question.

(Question read.)

Q. Now, Mr. Nieter, do you recall any statements made by Mr. Dempsey with reference to keeping any track of scratched ballots?—A. How do you mean, according to scratched ballots?

Mr. Feigenbaum. I refer now to any statements that may have been made by Mr. Dempsey with reference to the right of yourself as a watcher or any other watchers to keep track of any such ballots that were not disputed by the clerks and judges in the election commissioners' office?

A. What do you mean, by counting the number, how many there were, or the number of the ballots?

Q. Not the number of the ballots, the way that you found on an examination of such ballots, if you were permitted to do so?—A. We kept a record.

Q. What record were you permitted to keep?—A. Well, I kept one, and I referred that record to Mr. Bogy. There was but one precinct where that was, I believe, I am not positive how many votes there were, and I was permitted that time to check off the number of the ballots.

Q. The number of the ballot?—A. Yes, sir.

Mr. Cummings. Did you put the number of the ballot down?

A. Yes, sir.

Q. On your record?—A. Yes, sir.

Mr. Feigenbaum. What time was that in regard to that time?

A. I believe that was the first day, I am not positive.

Q. Now, what ballots did you keep track of then?—A. I kept track of all, how many was straight Democratic and how many were straight Republican, and the scratched ballots.

Q. That was the first day, I believe you said?—A. Well, the first day there was one precinct I was doubtful of some signatures, and I turned that in to Mr. Bogy, and I am pretty sure the four clerks kept a record of those ballots, because they had to testify on that. I am not positive they kept a record, but I kept a record.

Q. That was the first time?—A. Yes, sir.

Q. After that, did you continue to keep such records?—A. We never had any.

Q. Why?—A. They were different handwriting.

Q. I didn't understand you.—A. They were different handwriting. There was no use of my keeping a record of them when they looked like every one was different handwriting.

Q. Now, you didn't run across any further similarity of names?—A. No, sir.

Mr. Barrett. We object to that statement as a conclusion on the part of counsel.

Mr. Feigenbaum. Oh, I don't care, if it is stricken out or not. Can you tell us what statement Mr. Dempsey made with reference to keeping any track of the scratched ballots?

Mr. Hawes. I object to this question unless the time is stated and which Mr. Dempsey objected. I object for this reason: This count continued for a period of five days and five nights, and the occurrence must be shown, because there were nine wards in dispute and the objection was not made until late Saturday afternoon.

Mr. Feigenbaum. So as to create no question as to the time, I am willing to amend that question by referring you—by recalling your mind to what occurred on Friday morning, the recount having started on Friday, January 14, the third day of the recount, the morning of that day, will you tell us as best you can recall what statement Mr. Dempsey made with reference to the clerks and judges keeping any further record of scratched ballots or permitting the watchers to do so.

A. There was a statement made by Mr. Dempsey: This is not to keep any record of the scratched ballots—the watchers.

Q. Told the watchers not to?—A. Yes, sir.

Q. Did he say anything to the clerks as to permitting the watchers to keep them?—A. Why, at our table the clerks kept a record of all scratched ballots.

Q. Your table continued to do that?—A. Yes, sir.

Q. Of course, you don't know what the other tables did?—A. No, sir.

Q. But the instructions from Mr. Dempsey, the election commissioner, was that they were not to keep any record of scratched ballots?—A. Not of scratched ballots, I mean the numbers; I mean the number of the ballot.

Q. So that Mr. Dempsey instructed the clerks and judges and watchers to keep no further track of the numbers of any ballots that were scratched?—A. If there was a dispute in it it was up to the clerks, it was up to the four clerks, if I am not mistaken, the four clerks was the boss. If they decided on it, we were supposed to go the way they decided.

Q. Then, you could not bring any ballots before the four judges if the clerks were satisfied with it?—A. That is my understanding, as attorneys for contestant were there and they agreed on that.

Q. You didn't know they agreed to it?—A. They made the statement the first meeting.

Q. Who made that, one of the commissioners?—A. Yes, sir.

Q. Made that statement to you?—A. No; announced it open; that is my understanding.

Q. Did you hear any statement by Mr. Dempsey, one of the election commissioners, that the clerks and judges were not there to look for any fraud, but were simply to count the ballots and do nothing more?

Mr. Cummings. Do you call that leading your witness?

A. No; I don't recall it.

Mr. Feigenbaum. Did you hear Mr. Bogy make any statement following Mr. Dempsey's statement? If so, state what that statement was.

Mr. Barrett. Let Mr. Bogy testify himself.

Mr. Feigenbaum. Let him testify to what he heard Mr. Dempsey say.

Mr. Hawes. We submit that Mr. Bogy is the best witness as to what he said, and that Mr. Bogy ought to be called upon to testify as to any statement made by him during the recount.

Mr. Feigenbaum. We will be glad to oblige you to have Mr. Bogy testify, but we want the statement from this witness at the present time.

(Question read.)

A. Why, Mr. Bogy made a statement that he was the contestee——

Mr. Feigenbaum. Contestant.

A. That he had a right on all disputed ballots—I will tell you in a minute—I don't know how to word it.

Q. Well, just your best recollection.—A. If there was any similarity that he would have the right to find out which ballots so he could get them put before the board, that's the way I understand.

Q. That was his statement?—A. Yes, sir.

Q. That was in reply to a statement made by Mr. Dempsey?—A. Yes, sir; right before lunch one day.

Q. Do you remember that to be on Friday?—A. I am pretty positive it was on Friday right before lunch.

Q. That was the 14th of January, Wednesday being the 12th?—A. Some morning of the recount.

Q. Can you give what Mr. Dempsey said just before that to which Mr. Bogy made this reply?—A. Didn't I say that before, in regard to the number of the ballots, that no watcher——

Q. I understand clearly; just repeat it in your own way what you understand Mr. Dempsey to have said.—A. That no watcher was supposed to take any record of any number of the ballot.

Q. Of any ballots?—A. Of the number of it, if the ballot was 50 or 60 or what it was.

Q. That is all.

Cross-examination by Mr. Barrett:

Q. Now, George, you say you were employed by the General Motors Co. as a clerk?—A. I was.

Q. And you are out of employment now because the plant is shut down?—A. Yes, sir.

Q. What department were you in, George?—A. I was in the purchasing department.

Q. Who was your immediate superior?—A. My boss?

Q. Your superior officer?—A. Well, we had two of them out there.

Q. What are their names?—A. One was Fagel.

Q. What is the other one?—A. The fellow I got my job through was named Hunt.

Q. You were in the Chevrolet?—A. St. Louis manufacturing plant—the "B" plant.

Q. You were at what was known as table 6?—A. Was that table 6? I'm not positive.

Q. Well, there were Democratic assistant election commissioners Mier and Korbe and the Republicans Bolte and Weaver?—A. No, sir.

Q. Was it Korbe at your table?—A. No.

Q. Give me the names.—A. Brogan was the other watcher.

Q. I'm not talking about the watcher.—A. I believe one fellow was Butler or Hicks.

Q. Were you at the table with Silver?—A. I can name you Butler and Hicks and I believe the other man's name was Murray.

Q. You were at table 4—that is, Butler?—A. Butler and Hicks.

Q. Hicks was the Democrat, and Tom Brown?—A. Yes, sir.

Q. Who sat on the west side of the table?—A. He sat on the south side of the table.

Q. And Butler was on the west side of the table?—A. Yes, sir.

Q. And you sat on the southeast corner of the table?—A. Yes, sir; and Hicks sat on the side of me.

Q. And Murray was on the north side; you had your coat off and sleeves rolled up?—A. I don't recall whether I did.

Q. Don't you recollect you did and me coming along patting you on the arm?—A. I believe I had my coat off one day.

Q. You watched all ballots?—A. Yes, sir.

Q. Looked at every one—scrutinized them as they took them out and counted?—A. Yes, sir.

Q. Even handled some?—A. Handled them?

Q. Yes; didn't you have them in your hand and look at them?—A. No; I don't believe I did.

Q. Well, just think about that, George.

Mr. Feigenbaum. He said he didn't.

Mr. Barrett. Wait a minute.

Mr. Feigenbaum. He answered the question. Don't try to persuade him to answer your way.

Mr. Barrett. I am asking him to think about it.

A. I don't remember.

Q. You don't remember. You recall Bogy and myself going to that table on several occasions where there was a dispute, whether a ballot should be counted for either of the candidates?—A. I do.

Q. And when disputed, it was put aside in an envelope marked "Disputed envelope"?—A. Some of them were.

Q. I say whenever Bogy and I were called to the table—we would be called to the table occasionally—A. I don't believe you were.

Q. You don't recollect Bogy and I being at that table?—A. You were there but you were not called.

Q. You don't recall any disputed ballots being put in the envelope?—A. You were not called.

Q. You did not see me there?—A. I saw you there, but you were not called.

Q. There were no disputed ballots at that table at all, I understand you?—A. There were some put in the envelope.

Q. And then, when put in the envelope, they were recorded in a typewritten sheet in "disputed column," weren't they?—A. I had nothing to do with that.

Q. Well, you were sitting there?—A. Yes, sir.

Q. You saw the sheets that were made out?—A. Yes, sir.

Q. And when they put them in the "disputed column" they also put down the number of that disputed ballot, didn't they?—A. Yes, sir.

Q. And did you take any of those numbers that were on that sheet? When you would make up your report, if any in dispute, say, for Hawes or Bogy, you would make a memorandum?—A. I remember I marked one, "Republican scratched; no vote in dispute." I don't think we ever put a number.

Q. What kind of a memorandum did you make at that time; that is what I want to get at in the first place, for Mr. Bogy's information?—A. What do you mean?

Q. You made some memorandum on paper, made a report on each precinct after the recount was over?—A. Yes, sir.

Q. And you turned that over to Mr. Bogy?—A. Yes, sir.

Q. Or Mr. Hartman; I don't know which. Who did you turn it in to?—A. Mr. Bogy.

Q. What memorandum, if any, did you make on those?—A. The number of votes each party got—Socialist, Farmer-Workers——

Q. If any disputed ballots, did you make any report of that?—A. I put three in dispute.

Q. Would you indicate in what manner it was disputed; would you make any kind of a report to call it to Bogy's attention?—A. I did.

Q. What kind of a report did you make?—A. I said, "One Republican scratched; no name put in."

Q. Suppose we had a condition like this: Republican ballot, "Harry B. Hawes" written underneath the printed name "Bernard P. Bogy," and no line run through the printed name "Bernard P. Bogy"?—A. We generally counted that as a scratch for the printed man and a vote for the man whose name was on both parties.

Q. On both parties?—A. Yes, sir.

Q. You mean to say if Hawes's name was written under the printed name of "Bernard P. Bogy" and Bogy's name was not scratched, you counted that for Hawes?—A. If Mr. Hawes's name touched Mr. Bogy's, we generally counted it as Mr. Hawes's vote, and if it was "Hawes" with Bogy's name wrote through part of Mr. Hawes's, they counted it as a Bogy vote.

Q. In other words, if any scratch in the printed name you counted it as a scratched ballot?—A. No, sir; they gave it to the man that was——

Q. You classified it as a scratched ballot?—A. Yes, sir.

Q. And gave it to the man whose name was written underneath?—A. Yes, sir.

Q. That is not what I am referring to. I am referring to where not scratched in any way?—A. You said a line went through it.

Q. No, no; I didn't say that. I said if, for instance, the name of "Bernard P. Bogy" was written in lead pencil beneath the printed name of "Harry B. Hawes," on the Democratic ticket, and the name of Hawes was not scratched.—A. You said before if the line touched the other one.

Q. No; I didn't say that. Well, I will state it to you now: If you found a ballot where the name of "Harry B. Hawes" was written in lead pencil beneath the printed name "Bernard P. Bogy," and the printed name of "Bernard P. Bogy" was not touched in any way?—A. Never touched the printed one?

Q. No; never touched it; clear as a whistle.—A. First, I believe they were putting them in.

Q. I am asking you how you did it?—A. First they were putting them in as a dispute.

Mr. Feigenbaum. I insist that the witness be given a chance to answer.

Mr. Barrett. What I want to know is what kind of a report you made to Bogy?

A. One with two names on it.

Q. You would indicate that as one with two names on it?—A. Yes, sir.

Q. What would you call it; how would you classify it?—A. I made that report, and the way I understood it, it was up to the board to decide on it.

Q. They had a number of such like that at the start.—A. Not at our table.

Q. You didn't have any at all at the start?—A. No, sir; we always came out to a "T" on the number. We were lucky; I guess we had clean precincts.

Q. You don't remember any such ballots as I have described?—A. Well, there might be one or two.

Q. During the whole recount?—A. Yes, sir.

Q. But those were put in the disputed envelope, weren't they?—A. It was up to them; I had no jurisdiction.

Q. I say, they were put in a disputed envelope?—A. They were at first, I know.

Q. They were put in a disputed envelope and referred to the board?—A. Toward the end I believe they were not put in.

Q. I am talking about at the beginning.—A. We put some in, and the board had our total.

Q. And they were marked in a column headed "Disputed ballots"; they made an entry there giving the number of the ballot, did they—the clerks?—A. I don't know about that.

Q. You are not sure about that, are you?—A. No, sir.

Q. Can you recall any of the precincts that you counted?—A. There was only one precinct, and I don't know the name of it.

Q. Can you recall any ward or precinct in which you folks recounted the ballots? Can you give us the ward and precinct of any of them?—A. 2800 Marcus.

Q. 26–13. I am going to show you a copy of the report of the recount in ward 26, precinct 13, made at the election commissioners' office, which report is signed by A. J. Butler, W. J. Murray, Edward R. Hicks, and Thomas Brown, and ask you to look at it, please. Now, referring there to the column marked "Disputed ballots"—in the first place, that recount was made at the table at which you were watcher? Answer the question yes or no.—A. Yes, sir.

Q. Now, then, there is a column there marked "Disputed ballots," on the right-hand side?—A. Yes, sir.

Q. And in that column is entered the number of ballots that are disputed; is that so or not?—A. 3 4 2.

Q. I say the numbers of the ballots in dispute are marked there?—A. Yes, sir.

Q. How many are the numbers given that are disputed in that column?—A. It looks like five in that precinct.

Q. Now, is there any other memorandum mark on there that there is a dispute about?—A. There is five all told, but two no numbers; you couldn't call that a dispute.

Q. Well, I had better go over it with you. You also got the numbers down below of the Republican ballots in duplicate and Democratic ballots in duplicate, and you got the numbers of those ballots?—A. I never got the numbers.

Q. I say, the numbers are on this sheet?—A. Yes, sir.

Q. So this sheet does show the number of disputed ballots in ward 26, precinct 16?—A. Yes, sir.

Q. So that was taken at the end of the recount and not at the beginning?—A. I think our table did them all like that.

Q. Throughout the recount?—A. Yes, sir.

Q. They did, then, take the numbers of the ballots throughout the recount when there was any dispute about it?—A. You mean if there is a similarity of handwriting?

Q. Have any mark if the ballot was disputed for any reason?

Mr. Feigenbaum. Disputed by whom?

Mr. Barrett. Disputed by anybody at the table. Wasn't there a record made of it, for instance, if one of the recounting clerks would decide as to whether it should be counted for Bogy or Hawes, a record was made in this disputed column and the number of that ballot was given, wasn't it?

A. They were put in the "disputed envelope."

Q. They were put in a "disputed envelope" to be referred to the board of election commissioners to be passed upon and determined?—A. Yes, sir.

Q. And the numbers of it was indicated on sheets like this one before you?

Mr. FEIGENBAUM. I submit the record speaks for itself. That record shows in some instances it is "total none," and in others they did—that the sheets are the best evidence.

(Question read.)

A. Why, these refer to names and no scratch, and they were put in dispute.

Q. But the numbers of those ballots are recorded in the disputed envelope on this sheet?—A. They were in our table; I don't know how the rest of the tables.

Q. That was done at all instances?—A. At my table it was.

Q. Wherever a dispute about it?—A. Yes, sir.

Q. So that in every instance where a ballot was in dispute——A. How do you mean in every one?

Q. In every instance where a ballot was disputed—there was any dispute about a ballot as to how it should be counted, or as to its validity—it was put in a disputed envelope and a notation made on this sheet giving the number of it; that is true?—A. At our table; I am not speaking about the rest of them.

Q. I am speaking of your table, and your table only. Now, then, George, do you know of any member of the board of election commissioners making any objection to you taking a memorandum of anything that was contained on those sheets for information of yourself, or Mr. Bogy or his counsel?—A. Well, they told us not to keep the number of the ballots.

Q. Didn't they tell you this, that you were not to take the number of the ballots except in cases of disputed ballots, of what was recorded on this sheet?—A. My recollection is they said to keep a record of the numbers of the ballots.

Q. Excepting in cases where they were disputed?—A. I never heard that.

Q. You don't recall that?—A. No, sir.

Q. You heard the instructions read, didn't you? There was a set of instructions, typewritten instruction, that were read by the commissioners, weren't they? Do you recollect it, or do you not—the first day?—A. Well, then, some of them were contradicted right after that.

Q. Well, do you or not; answer it yes or no?—A. I don't recollect; no, sir.

Q. You don't recollect of any instructions read?—A. No, sir.

Q. Did you see any instructions posted up anywhere on a post there?—A. No, sir.

Q. Now, let me read you instructions No. 8 and ask you whether or not you heard this read out loud by Commissioner Arnold, the chairman of the board:

"If there is any doubt as to whether any ballot has been properly marked, the clerk shall place such ballot in the envelope for the decision of the board of election commissioners; also place in this envelope all ballots that have no corresponding numbers on the corresponding poll book, and those that are duplicate or triplicate numbers; also all other disputed ballots."

A. Well, toward the end, if double ballots——

Q. Well, wait a minute. That isn't the question.

Mr. FEIGENBAUM. Well, let him answer it.

Mr. BARRETT. If that can't be answered—it has got to be answered yes or no.

Mr. FEIGENBAUM. He doesn't have to answer any question yes or no.

A. I will just tell you there was a statement——

Mr. BARRETT. I am going to insist this question be answered yes or no. Then if he has any explanation he can make it afterwards; and you are not going to make the answer for the witness; and I do object to your interpolation in this question for the purpose of giving a cue or a line to the witness.

Mr. FEIGENBAUM. I submit I have said nothing at this time to give the witness any cue as such, but I insist the witness be given the right to answer this question in his own way. Go ahead now.

A. At first they would put in duplicate ballots, of the duplicate numbers in for the board to decide on; and later when they came out to a "T" they were not put in the disputed ballots. They were counted for whoever they were for.

Mr. HAWES. A few questions to clear up the recollection of the witness. You remember on the morning that the recount began that instructions were read to you by Commissioner Arnold, to all the judges and clerks and watchers, on the first morning?

A. Yes, sir.

Q. And you remember seeing at that time in the room Commissioner Buder, Commissioner Dempsey, and Commissioner Lammert while these instructions were being read?—A. I don't have any recollection of seeing Mr. Lammert; I saw the rest of them.

Q. You saw Mr. Buder and Mr. Dempsey?—A. Yes, sir.

Q. And the instructions that we refer to were read to all the judges, clerks, and watchers; then at a later period you were instructed orally by Commissioner Arnold, in the presence of the other commissioners, that if there was a ballot where a name was written in but the other name was not scratched should be put in as no ballot—as no vote; that is what you have been referring to—that is where you are confused; it is on the same day that that change was made.—A. Well, now, Mr. Hawes, this one with the duplicate now, if the poll books count 400 and there is 400 ballots in the box, and if there is 15 duplicates in there, they were counted at our table who they were voted for.

Q. Mr. Nieter, I am trying to get you clear on these different instructions.—A. Well. I might be wrong there.

Q. Now, let me go over it again. The first instruction was read by Commissioner Arnold with the other commissioners present, you remember that, don't you?—A. Yes, sir.

Q. Now, the only other instruction which was read to you was given to you orally, was given to you by Commissioner Arnold later the same day, with the other commissioners present, telling you where there were two names and without a scratch it was no vote?—A. I don't recollect that.

Q. You don't recall any oral statement made by Commissioner Arnold later on?

Mr. Feigenbaum. To that effect.

A. To that effect. I have no recollection.

Mr. Hawes. Now, I am going to ask you if at any time, excepting these two times, did you receive any instructions whatever from the board?—A. We received one, I don't remember who the member of the board was, where they told us if the votes tallied with the ballot box, if it was a duplicate, to count them for who they were.

Q. That was Mr. Arnold?—A. I don't recollect the name.

Q. Well, you know the man; he was the tallest man in the board?—A. I don't remember who did it, but I remember one of the board told us.

Q. Now, with the exception of those two occasions, did anybody for the board give any instructions to you watchers and clerks?—A. Well, Mr. Dempsey made a statement one morning, which I had that up before, about that Friday morning, about not to take the memorandum of the number of the ballots. Of course, I didn't think that was right, because everybody's vote is supposed to be kept, who they vote for.

Mr. Feigenbaum. I ask that be stricken out as already in.

Mr. Hawes. Isn't this on the morning, speaking for the board, Mr. Arnold first read his instructions?

A. Yes, sir.

Q. Then the next occasion changed the instruction, with the board present, to expedite the count, explaining that it would save time—Mr. Bogy was present, his counsel were present, and all the watchers were present; then now you refer to a third occasion.—A. Well, Mr. Dempsey——

Q. No; wait a minute. You refer to a third occasion where Mr. Dempsey made a statement?—A. Didn't he make a statement on Friday morning?

Q. I am going to go slow with you.—A. Yes, sir.

Q. The first two statements made by Mr. Arnold were made on the first day of the count?—A. I don't know if they were the first day. I heard him make two announcements.

Q. On the first day?—A. Yes, sir.

Q. Then, did you hear any other statement made by the commissioners until Friday or Saturday of the count?—A. I don't recall any.

Q. You don't recall any on Tuesday?—A. We wasn't there Tuesday.

Q. Wednesday, Thursday——A. Wednesday was the first day; about 10.30 or 11 o'clock.

Q. Now, there was a statement made by Mr. Dempsey that you refer to?—A. Yes, sir.

Q. That statement related to keeping a private memorandum of number of ballots?—A. That we were not allowed to keep the number, like if I voted 80 in my precinct we were not allowed to keep that record.

Q. Excepting where the ballot was disputed?—A. Well, of course, they would check up that record.

Q. Well, I ask you the question again, with the exception of where the ballot was in dispute—you have just seen the record where every disputed ballot has a number put opposite?—A. Yes, sir.

Q. So that you know that these ballots which were disputed were numbered and the number kept?—A. At our table.

Q. I am only asking you about your table. Of course, you were not supposed to be at any other table, and have nothing to do except at that one particular table?—A. Yes, sir.

Q. Those are the only three occasions that you know of; is that correct?—A. Yes, sir.

Q. Didn't Mr. Bogy consult with you frequently as the count progressed?—A. Well, he wasn't on the board.

Q. I am not talking about being on the board. Now I am through with the board.—A. All right.

Q. Didn't you consult Mr. Bogy frequently during the recount?—A. I turned in my lists whenever they were due.

Q. Mr. Witness, I am not trying to confuse you; I will go slow and easy. I am asking you a plain question. Did you consult and confer with Mr. Bogy from time to time during the recount?—A. Yes; I did.

Q. You did?—A. Yes, sir.

Q. Did you furnish him at the end of the recount of each ballot box with a memorandum?—A. Yes, sir.

Q. And he frequently during the recount talked to you about the progress of the recount?—A. Yes, sir.

Q. Consulted with you, asked you questions about it that way?—A. In what way?

Q. All right. Did Mr. Bogy walk up to your table from time to time and ask how the thing was getting along?—A. Yes, sir.

Q. Did he look at your memorandums that you were making from time to time?—A. Well, he got it after each precinct was done.

Q. And he looked at it in the meantime frequently?—A. I don't recall that he did.

Q. You don't recall that?—A. No, sir.

Q. Now, I want to ask you if it was not your understanding, and so understood at your table, that wherever there was a ballot which was in dispute between the two Republican judges—the two Republican clerks and the two Democratic clerks, or where a ballot was disputed by Mr. Bogy or Mr. Hawes, that that ballot was to be put in the envelope marked "Disputed ballots"?—A. Yes, sir.

Q. Every ballot in dispute was to be put in that envelope, was it not?—A. Yes, sir.

Q. And then referred, as you understood it, to the board of election commissioners for decision?—A. Yes, sir.

Mr. Barrett. Now, in every such instance as that the record was also made in this sheet here giving the number of the ballot that was disputed?

A. Yes, sir.

Q. Now, then, George, I am going to get you back to my original question of the list of instructions which were read by the board, which was instruction No. 8, and ask you if you recollect this instruction being read to you by Commissioner Arnold the first day:

"If there is any doubt as to whether any ballot should be properly marked, the clerks shall place said ballot in the envelope for the decision of the board of election commissioners; also place in this envelope all ballots that have no plain number on the ballots and books, and those that are duplicates or triplicate numbers; also number of ballots."

Do you recall that being said?—A. I recollect that being said, and I heard some of it contradicted.

Q. Well, I say you recollect that being read?—A. Yes.

Q. You say you heard it being contradicted?—A. Well, part; when votes tally with the poll books.

Q. Now, at that time that was read, the morning of the first day you started work, that was Wednesday morning?—A. Wednesday morning.

Q. Now, then, you say there was some change or modification of that rule afterwards?—A. Yes, sir.

Q. When?—A. Why, Thursday or Friday; I am not positive.

Q. Well, now, then, what was said on that occasion and by whom?—A. Well, I can't recollect, but I can tell you what it was.

Q. You recall who said it?—A. One of the board.

Q. What was the name of the member?—A. I have no recollection.

Q. Well, was it Arnold, the big fellow?—A. I don't remember who. I will tell you what it was.

Q. All right, tell what it was.—A. If the poll books tallied with the vote in the box, the duplicates were not supposed to be put in the disputed envelope.

Q. They were to be counted?—A. Counted.

Q. That was Commissioner Arnold, wasn't it?—A. Well, it was said and it was agreed upon.

Mr. HAWES. Mr. Bogy was there, and he will admit it was Commissioner Arnold.

Mr. BOGY. I do remember they stated that not only the duplicate but they made the statement triplicate ballots.

Mr. BARRETT. Are you stating that as counsel or being sworn?

Mr. FEIGENBAUM. He is stating it as counsel.

Mr. BOGY. Commissioner Arnold made the statement that duplicates or triplicates, and I believe he added the word quadruple, or anything of that sort, should be counted if they tallied with the number on the poll books and the number of ballots in the box.

The WITNESS. So it tallied and they were all counted.

Mr. HAWES. And this ruling of Commissioner Arnold was the result of the ruling of the board, to which contestant and contestee and their counsel had agreed.

Mr. BARRETT. Now, George, referring to that statement which you have testified to as made by Commissioner Dempsey, I will ask you if it is not a fact that on the occasion to which you refer that Commissioner Dempsey made this statement, that the watchers for the contestant or the contestee were not to take the numbers of the ballots except on such matters as was contained in the sheets of the recounting clerks; they were to take no other numbers, but any numbers on that sheet they could take, but no others; isn't that what he said?—A. Well, I am not positive of that.

Q. You are not clear about that?—A. No, sir.

Q. You do not want to convey the impression that Commissioner Dempsey would not permit watchers for either side to take the numbers of the ballots that were in dispute?—A. Oh, I don't mean that. I thought you meant take their number, like "80," and that was scratched.

Q. In other words, you were not to take the numbers of these ballots, good or bad; you were not to take the numbers of undisturbed ballots?—A. No, sir.

Q. That is what he instructed you?—A. Sure.

Q. And that is all. Now, this statement made by Commissioner Dempsey that you referred to was made about the same time that your table recounted ward 26, precinct 13, wasn't it?—A. No, sir.

Q. When?—A. They didn't hit ward 26 until Saturday, I think.

Q. It was just before noon that statement was made?—A. Friday before noon, about 11.30.

Q. And were Mr. Bogy, Mr. Dempsey, and I together?—A. I don't know if you were there or not.

Q. Now, George, you went all through this recount, I believe, from beginning to end?—A. Yes, sir.

Q. Did you see anything on the part of the Democratic or Republican clerks there recounting that in any way excited your suspicion and questioned their honesty?

Mr. FEIGENBAUM. Wait a minute. I object to that.

A. At our table both men got a square deal.

Q. Got everything coming to them?—A. Yes, sir.

Q. No ballot was counted for any man that was not cast for him, was it?—A. No, sir; he got a square deal.

Redirect examination by Mr. FEIGENBAUM:

Q. You kept this memorandum that you have just outlined that you gave to Mr. Bogy of each precinct when that was completed?—A. Yes, sir.

Q. Tried to think about that?—A. I said that in the first part, that there was in one precinct, where there was a similarity of handwriting, and I gave Mr. Bogy a list of that. That was before Mr. Dempsey made a statement.

Q. Did you give him just the number of the ballots?—A. I gave him the number of the ballots.

Q. The number of the ballots?—A. Yes, sir.

Q. Are you sure of that?—A. Yes, sir; that was the first day; and then when Mr. Dempsey made the statement, why, I ceased to do that.

Q. You understood Mr. Dempsey as instructing you not to take the numbers of any ballots where any similarity in handwriting?—A. Well, we never had any more.

Q. But that was ceased?—A. If we had any more, why, I imagine I would have kicked on them, and I would have took them or made a clerk make a report on it.

Q. With reference to what were disputed ballots, the clerks permitted you to engage in their discussion, or did they decide them between themselves, what were disputed and what were not disputed?—A. I looked at them; I didn't touch them when they were given. I called them on it, and I wanted a memorandum of those ballots, and they gave them to me.

Q. Which ballots?—A. Just those——

Q. Disputed ballots?—A. No: similarity of handwriting.

Q. Did you get the numbers of the ballots?—A. I did.

Q. Did you turn them over to Mr. Bogy?—A. Yes, sir.

Q. That was the first day?—A. I believe it was the first or second box; it was the first day—might have been Thursday morning.

Q. Before Mr. Dempsey made his remarks?—A. Yes, sir.

Q. Getting back to this question I have just asked. In determining what were the disputed ballots, did you understand the rules that were given you by the election commissioners to permit you to discuss and help decide what were disputed ballots or where the judges and clerks to do that?

Mr. Barrett. I object to that question—what his understanding of what the rule was.

Mr. Feigenbaum. If you will admit that the watchers had no right——

Mr. Barrett. I do not admit it.

A. Why, it was up to the four clerks and judges to decide on it.

Mr. Feigenbaum. And only such ballots as were determined "Disputed ballots" by the judges and clerks were put in those envelopes?

A. Well, I don't believe we had but 4.

Q. I mean only such as they decided were put in those envelopes.

Mr. Barrett. Well, the question can not be put to him. It did not arise.

Recross examination by Mr. Barrett:

Q. George, I suppose if you thought you had a kick you would have made it, would you?—A. A kick—the similarity of handwriting you mean?

Q. Similarity of handwriting, or if you thought these ballots ought to be counted for Bogy that wasn't counted for him, you would have kicked about it and brought it before the board?—A. I would have called one of the attorneys and let them decide on it.

Q. In other words, you would have called the attention of Mr. Bogy or his counsel?—A. Yes, sir.

Q. And who would have felt they had a right to discuss that matter and present it to the board; is that right?—A. Why, Mr. Barrett, whenever there was a dispute those other watchers called you, and I think it was my privilege to call him.

Q. You did that?—A. We only had one or two.

Q. You did that very thing?—A. Yes, sir.

Q. If there would other occasions arise of the same character, would you also say——A. We never had any.

Q. I say if you did have any?—A. I don't know.

Q. You don't know what you would do?—A. No, sir.

JOHN F. BURCKLEY, of lawful age, being produced, sworn, and examined on the part of the contestant, deposeth and saith:

Direct examination by Mr. Feigenbaum:

Q. Now, what is your name?—A. John F. Burckley.

Q. How old are you?—A. I am 57.

Q. What is your occupation?—A. I am not doing anything right now.

Q. What is your general occupation?—A. Clerk.

Q. Were you one of the watchers for Mr. Bogy in the recount in the election office?—A. Yes, sir.

Q. Prior to that, where were you engaged?—A. Well, I haven't done anything for a year.

Q. Do you recall what table you worked at?—A. No. 2.

Q. Do you remember the names of any of the judges and clerks?—A. I don't remember the names.

Q. Was Frank J. O'Keefe, Drach, Rothman, Sperflage at that table?—A. Yes, sir.

Q. Now, Mr. Burckley, when you first started to work around there as watcher, did you hear any rules read by the election board?—A. I did; Mr. Arnold, the commissioner, in the morning give the orders that none of the watchers were allowed to touch any of the scratched ballots or have anything to do with the ballots at all.

Q. That was the first morning?—A. Yes, sir.

Q. And was that immediately after he read those rules to you?—A. He read them rules right away.

Q. And he said also that no watchers——A. Said no watchers were allowed to touch any of the scratched ballots or keep tally of them or anything of that kind.

Q. While you were at that table and the judges and clerks counting the ballots, did you undertake to look to see whether there was any similarity in the handwriting of the names of "Harry B. Hawes" inserted where Bogy was scratched?—A. I did; yes, sir.

Q. And see many of them?—A. Well, I saw a few of them, but they would not allow me to look at any of them hardly: they said I had nothing to do with the ballots.

Q. Who said that?—A. The judges there.

Q. You mean the deputy commissioners?—A. Yes, sir.

Q. Whenever you use the word "judges" you refer to those deputy clerks at the table?—A. Yes, sir.

Q. Did you give Mr. Bogy a list of any irregularities that you saw there?—A. Well, I got the list every evening.

Q. Were you able to take the numbers of any ballots?—A. No, sir.

Q. Why was that?—A. They would not let me; they said I had no right to have anything to do with any of the ballots.

Q. Who do you mean by "they"?—A. The judges.

Q. Those judges would not let you?—A. They would not let me touch any of the ballots or keep any tally whatever on any of the scratched ballots.

Q. Did you make any complaint about that?—A. I called Mr. Bogy's attention there one time, and he came over to the table there, and they all looked at some ballots, one of them had the names written in, and Mr. Hawes's name was printed in it; and then Mr. Bogy made the assertion that he wanted us to keep tab of all of the scratched ballots, and the number of them, and Commissioner Dempsey came out and said that we watchers had no right to keep any tabs of any scratched ballots, or any numbers of any of the ballots at all; that we were not allowed to handle them.

Q. Was that on Friday morning?—A. I think it was on Friday morning.

Q. The recount having been started on Wednesday, and this occurred, to the best of your recollection, Friday morning?—A. Yes, sir.

Q. Did Mr. Bogy make a statement?—A. Mr. Bogy made a statement that it was his intention that the watchers should keep the numbers of all the scratched ballots, and the judges said it was "nothing doing," we can't handle them. He said that was his idea of finding out where the fraud was.

Q. Mr. Bogy said that?—A. Yes.

Q. Did he make that statement aloud where all the judges and clerks were?—A. Yes, sir; Mr. Dempsey came out right afterwards and said we were not allowed handle any of the ballots whatever.

Q. Was Mr. Dempsey's statement loud enough so everyone could hear it?—A. Yes, sir.

Q. Thereafter you were not permitted to take any of the ballots?—A. I didn't take any of the numbers, or anything else.

Q. Were you permitted to keep tab of the numbers of the scratched ballots in any particular precincts?—A. Well, at times I could keep tab and at times I couldn't.

Q. Why couldn't you at times?—A. Well, we would turn them over in a hurry.

Q. The judges would turn them over?—A. The judges would just as much as tell me, "You have nothing to do with those ballots," and, of course, I didn't bother them.

Q. Do you recall Mr. Bogy making any statement with reference to scratched ballots, as to what he wanted?—A. He wanted the numbers of all scratched ballots.

Q. Do you remember his exact statement?—A. He said that that was his object of getting the scratched ballots, was to get the numbers of the scratched ballots so he could at any time refer to them as it should be.

Q. Was anything said then about photographing any of those ballots, do you recall?—A. No, sir; not as I can recall.

Mr. Barrett. I am objecting to his manner of suggesting to the witness.

Mr. Feigenbaum. Mr. Burckley, this recount continued from Wednesday, the 12th of the first month, until the following Monday evening?—A. Yes, sir.

Q. The 17th?—A. That is right.

Q. Now, Friday morning, when this statement was made by Mr. Dempsey, that was the third day of the recount?—A. Yes, sir.

Q. Can you give us any idea of how far you had proceeded, whether half finished, or one-third finished, or what, in the counting of the ballots?—A. You mean at our table?

Q. At your table, of course.—A. Well, we had about, I guess, about six or eight precincts to do yet.

Q. How many had you completed?—A. I don't remember how many exactly we had completed.

Q. Now, when the judges and clerks discussed any disputed ballots, were you permitted to joint in the discussion?—A. Whenever they had any disputed ballots it was put in the disputed envelope, and it was not counted, it was left to the board of commissioners to count it. Whatever was there, they handled; they left and put them in the envelope and let the board of election commissioners handle.

Q. That is, the judges and clerks did this?—A. Yes, sir.

Q. Who determined as to what was a disputed ballot?—A. The judges and clerks.

Q. You had nothing to do with that?—A. No; I had nothing to do with that.

Q. Did they ever put in any other because you wanted them to?—A. No, sir; we had a pretty nice proposition there; we had no kick in our precincts.

Q. How do you mean?—A. Everything went nice and straight.

Mr. Hawes. You mean at your table?

A. Yes, sir.

Q. You mean you had no complaint to make about what was called "disputed ballots"?—A. No, sir; only some of those that were scratched looked so much alike. We didn't dispute about it, because when we called Mr. Bogy to look at them that settled it.

Q. None of those were put in any of the envelopes?—A. No, sir.

Q. Any similarity of the handwriting?—A. No, sir.

Q. Did you see any ballots?—A. No, sir.

Q. Or number of ballots?—A. No, sir—at first, when we started there, I would look at the ballots, stand up and take a look at it, and move right on. We didn't stop no time.

Q. Well, why didn't you stop?—A. Well, they said I had no right to handle the ballots in order to keep tab of them, and I just done as I was told.

Q. Was that the reason you were unable to see whether the scratched ballots were similar or different ballots?—A. I only saw that on a couple of them at the start; afterwards I didn't get a chance to see.

Q. Those few you saw at the start, did you notice any similarity in the names written in?—A. The names written in were a good deal similar.

Q. That is between the name "Harry B. Hawes" on one ballot and on another?—A. Yes, sir.

Q. But you took no numbers of those ballots?—A. No, sir.

Q. You were not permitted?—A. No, sir; I wasn't permitted to.

Cross-examination by Mr. Barrett:

Q. Now, Mr. Burckley, you say you were at table No. 2?—A. Yes, sir.

Q. And the Democrats were Rothman and O'Keefe?—A. Yes, sir.

Q. And the Republicans were Drach and Sperflage?—A. Yes, sir.

Q. You were there during the entire time of the recount?—A. I was; yes, sir.

Q. From the beginning to end. Do you want to be understood as saying that you saw either one of those four men do anything wrong?

Mr. Feigenbaum. I object to the conclusion, whether it was right or wrong. Let him state what was done.

Mr. Barrett. I say, do you want to be understood as saying that any of those men did anything wrong in the recount?

A. How do you mean?

Q. Well, I am asking you if you want to be so understood?—A. The men done their work. The only wrong they did was they would not allow me to look at any of the ballots.

Q. I mean as to recounting and tabulation of the ballots?—A. No; as to the count and tabulation of the ballots, I think they were all right.

Q. And each candidate got what was coming to him?—A. They got a square count.

Q. And if it was counted over again, it could not be improved upon?—A. No, sir.

Q. And the only objection you have got to it, they would not permit you to take down numbers?—A. Yes, sir; or to keep tab of the ballots.

Q. Now, you say that Commissioner Dempsey gave an instruction there one day that you were not to take the number of any scratched ballots?—A. Yes, sir; and not to keep account of any of the ballots.

Q. Didn't Commissioner Dempsey say this, that you were not to take the numbers of any ballots except those ballots whose validity was disputed or questioned, and that the only ones you are to take numbers of are those who go on the records, the clerks' decision?—A. He would not let us take any numbers.

Q. There was somebody else seated at that table besides you?—A. Yes; a lady sitting there.

Q. Didn't she make notations?—A. Yes, sir.

Q. Didn't you have some ballots there that were disputed and which your table sent to the board of election commissioners?—A. We had some ballots that was probably, the names or something was wrong about them, and we put them in the envelope and let them go to the board.

Q. You had ballots that were put in the disputed envelope and referred to the election commissioners?—A. Yes, sir.

Q. And when that was done, the numbers of those ballots were put in a sheet kept by the clerks under a column headed "Disputed ballots"?—A. No; the numbers were kept on that tally sheet.

Q. I am going to hand you a copy of the report of ward 19, precinct No. 6, signed by Frank J. O'Keefe, William Drach, U. N. Rothman, and H. Spertlage, and direct your attention to that sheet. Now, looking at that sheet, and to the extreme right-hand column headed "Dispued ballots," there are several ballots recorded in there by number; is that not true?—A. Yes.

Q. What is your answer?—A. Yes.

Q. And those ballots are what are commonly called "Disputed ballots" that were placed in the envelope and referred to the board of election commissioners for decision?—A. Yes, sir.

Q. And on the lower portion of this sheet there is a notation indicating the numbers of duplicate ballots?—A. Yes, sir.

Q. And if there was a Republican ballot, no name, and no vote?—A. Yes, sir.

Q. And a Republican ballot and six open numbers, and giving the numbers that are open?—A. Yes, sir.

Q. And that was referred to the election commissioners for decision?—A. Yes, sir.

Q. Now, then, do you want to be understood in this testimony that you are now giving that you were not permitted to take those numbers of the disputed ballots referred to the board of election commissioners for decision?—A. Now, the disputed ballots of this kind here, sure, we could take those numbers; but none of the others.

Q. Then in cases of disputed ballots, and the numbers being recorded on the disputed column, of the sheet prepared by the recount clerks, you were permitted to take those numbers, were you?—A. Yes, sir.

Q. And wouldn't you get to notice the grounds of dispute?—A. Well, no; they didn't do that.

Q. I say you could have done it if you had wanted to, nobody would have prevented?—A. They just as much as said, "You have no right to take it."

Q. What words did they use? For instance, did any of these four gentlemen tell you in this case, ward 19, precinct 6, for instance, where 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 were in dispute——A. These were all duplicate numbers.

Q. All right; did you have any there in dispute?—A. They are all duplicate numbers, and the duplicate numbers some of those they counted.

Q. Who counted them?—A. Why, the clerks did that.

Q. The clerks counted those duplicate ballots in this instance?—A. Yes, sir.

Q. Wasn't it the board of election commissioners that counted them after they were referred to them?—A. Well, we did that at first.

Q. In this instance, nineteenth ward, sixteenth precinct, when was that done?

Mr. Feigenbaum. I object to that because the sheet itself before the witness will be in evidence, and will show by whom they were counted, and this is only asking the witness to repeat the sheet and say what it shows.

Mr. Barrett. I am asking you in the nineteenth ward, precinct 6, whether the recounting clerks, in the first instance. counted the ballots for each candidate, or whether they put it in disputed envelopes and referred it to the board for decision?

A. These are the duplicate numbers here; and they counted them and saw how many were for Hawes or saw how many was for Bogy. Then they would mark them down here in column number so and so, "Duplicate number was for Hawes" or Bogy, whichever they were. These were not really disputed ballots, in that way; they were duplicate numbers, but not disputed ballots.

Q. How many duplicates are there there?—A. Well, there is 1, 2, 3, 4, 5, 6, 7. 8. 9, 10, 11, 12; there is 12 duplicated ballots; we used to call that six duplicates.

Q. Six sets?—A. Yes, sir.

Q. In that instance, do you know whether or not the judges and clerks took those 12 ballots and counted them in the first instance, or whether they were put in the disputed envelope and referred to the board for the board to determine whether or not they should be counted?—A. Well, when——

Q. That is, the nineteenth ward, precinct 6?—A. I know at first we took all of them and put them in the envelope, and then they came out and give us orders we were not to put any duplicates in there except ballots disputed; wasn't right; then we counted them in. and we counted each one up there. and they are counted for each candidate, one of them.

Q. At what stage of the recount did it take place?—A. I think the day after——

Q. What ward were you counting?—A. I couldn't say.

Q. Were you counting the nineteenth ward?—A. I don't recollect.

Q. Is the nineteenth ward the precinct in which you were closing, I think, the first of the letter closed?—A. I couldn't tell you that, because I didn't keep that close tab.

Q. In this particular instance I want to direct your attention that the total vote recorded here for Bogy is 310, in indelible ink; that immediately thereunder is drawn in red ink a total, 317; in column "vote," 210; and immediately below that figure 5, in red ink, written underneath, the total of which is 215. Doesn't that indicate they were referred to the board of election commissioners and the board of election commissioners counted them afterwards?—A. Yes; it looks that way.

Q. Is that your understanding of it?—A. That understanding——

Q. Is that your understanding?—A. Well, at first they did, and afterwards they counted them and never marked them.

Q. Now, then, so that we may understand this and get it clearly, as to your conception of the matter, did not Commissioner Dempsey say that you were not to take the numbers of any ballots except those on which a notation had been made on the sheet of the recounting clerks?—A. No; he said we had no right to take any count of any ballots.

Mr. Hawes. This was in the afternoon that he made that statement?

A. I think so.

Mr. Barrett. What time?

A. I couldn't tell you.

Q. What day was it?—A. It was the day that Mr. Bogy made the kick about them numbers.

Q. So your understanding of it is that you were not permitted to take numbers of any ballots?—A. Of any ballots.

Q. Even though it was in dispute, and even though it was referred to the board of election commissioners for determination, you were not permitted to take the number, that is your understanding?—A. That is my understanding.

Q. And that is your understanding of what Mr. Dempsey gave as his instructions?—A. Yes, sir.

Q. You say you wanted to see some ballots and they wouldn't permit you to see them?—A. When I went over there to look at them I was politely told I had nothing to do with them.

Q. Did Mr. Bogy come over and look at any ballots at your table?—A. He did.

Q. Did they permit him to look at them?—A. He looked at them, and then is the time he made the kick. The judge told him the orders that nobody was allowed to look at those ballots or keep account of them.

Q. Who was it made that statement?—A. I think it was Mr. Rothman.

Q. Did you ever see me go over and look at the ballots?—A. Yes, sir; I did.

Q. The young lady sitting at the table, did you see her look at these?—A. She was sitting at the side.

Q. She made notations?—A. Yes, sir.

Q. Did you see Mr. Cornelius Bauer, Mr. Bogy's attorney?—A. I wasn't paying much attention to that.

Q. You think it was Mr. Rothman made that statement? Anybody else make that statement?—A. The other judge.

Q. That was O'Keefe?—A. I think that was the Republican judge.

Q. Or Sperllage or Drach?—A. This was the smallest one of the four.

Q. That you couldn't look at them?—A. Yes.

Q. There was a Republican and a Democratic judge made that statement?—A. Yes, sir.

Q. And you told this to Bogy?—A. Yes.

Q. That was, you say, Friday or Saturday?—A. I don't just exactly remember what day it was. It was one of those days, it was toward the latter part of the week.

Q. Did you tell it to anybody else?—A. No. I told him and he went right then and made the kick about it.

Q. Did you hear him make the kick?—A. Right at the table there.

Q. What did he say?—A. He said that he wanted those scratched ballots counted, that was his object of having those scratched ballots counted, that he could at any time go back to any of the wards and precincts, and know the number of it, and go back and know where to look for it.

Q. What do you mean by "those scratched ballots"?—A. Republican ballots, scratched Bogy ballots and put Hawes in.

Q. He wanted to take all the Republican ballots scratched?—A. Yes, sir.

Q. He wanted to take the numbers of all those?—A. Yes.

Q. Whether any dispute about them or not?—A. Yes.

Q. And it was that he was told he could not do?—A. Yes.

Q. And that was all?—A. Yes, sir.

Q. And that is the only complaint you have about that table?—A. That is all.

Q. You were a watcher for Mr. Bogy?—A. Yes, sir.

Q. You were hired by him?—A. Yes, sir.

Q. How much did he pay you a day?—A. He paid me $7.50.

Q. $7.50 for 10 hours?—A. Yes.

Q. How many others did he have employed there?—A. I couldn't tell you how many others there were there; I don't know how many we had.

Q. Was Mr. Feigenbaum there, who sits here as attorney?—A. This is the first time I ever met him.

Q. You know Mr. Bauer was his attorney there?—A. That is what I thought he was.

Q. He was around there?—A. Yes; he was around.

Q. And others around?—A. Yes.

Q. There is another Mr. Feigenbaum. Did you see him there, too? A lawyer? There was another Mr. Feigenbaum there who was a clerk for the board of election commissioners, wasn't there; did you know him?—A. Yes; I saw him there.

Q. And he was working there?—A. Yes, sir.

Q. Have you been up before the election commissioners' office since the recount was completed?—A. No, sir.

Q. How long have you been waiting in this outer office before called as a witness?—A. I have been here since 10 o'clock this morning.

Q. Did you see the Mr. Feigenbaum in the outer office who was clerk at the board of election commissioners, did you see him in this outer office here?—A. Yes, sir.

Q. You saw him here all evening?—A. Yes, sir.

Q. He is out there now?—A. I couldn't say that.

Q. He was when you came in?—A. He was there when I came in.

Mr. Hawes. Do you know Mr. Hartmann?

A. No, sir; I merely met the gentleman up there at the election commissioners' office; that is the first time I ever met him.

Q. You haven't seen him since?—A. I don't know anything of him.

Q. What wards did your table count?—A. Well, I could not tell you all the wards it counted. I have got a list of them at the house. I didn't bring the list along.

Q. Well, would you remember—I mean the precincts and wards you counted?—A. Well, I couldn't just remember them; no.

Q. What time did your particular table finish its last recount?—A. The last precinct, you mean?

Q. Yes.—A. Well, now, let me see——

Q. On Monday?—A. I guess we finished about half past 3 or 4 o'clock.

Q. In the afternoon?—A. Yes, sir.

Q. Some of the others had finished at noon?—A. I think they did; I couldn't say that for sure, either, because I wasn't watching any of the others doing their work.

Q. You have made reference to a statement of Commissioner Dempsey during the afternoon.—A. I think it was in the afternoon when he made that assertion.

Q. Now, was it in the afternoon of Friday or was it in the afternoon of Saturday that he made it?—A. It was earlier than that; it must have been either Friday or along there; I know it was the latter part of the week.

Q. The recount was practically completed at that time?—A. Had a day or two to go; Friday and Saturday we worked and Monday.

Q. Most of the crew was through at noon on Monday?—A. I couldn't say that; there may have been some; maybe not.

Q. Well, you know, or do you know, whether all the recounting was practically finished—only a few precincts left to be completed during the afternoon of Monday?—A. Do you mean Monday afternoon?

Q. Monday, the afternoon when they finished?—A. Well, some were still counting; had to come back again and count some of them over.

Q. Do you remember the morning the recount began that Mr. Arnold, with the other commissioners in the room, read some instructions as to how to make the recount?—A. Yes.

Q. You also saw these instructions pasted in the room, did you not?—A. Yes, sir; I saw them there.

Q. Do you remember this instruction:

"If there is any doubt as to whether any ballot has been properly marked, the clerks shall place said ballot in the envelope for the decision of the board of election commissioners; also place in this envelope all ballots that have no corresponding numbers on the poll book, and all of those that have duplicate or triplicate numbers; also all other disputed ballots."

You heard that read?—A. Yes, sir; they came out and give us orders.

Q. One minute, please. Did you hear this read?—A. Yes; I heard it read.

Q. Then later Commissioner Arnold made a verbal statement in the presence of Mr. Buder and Mr. Lammert and Mr. Dempsey to the effect that where there were duplicates and triplicates, but the total number of votes did not exceed those in the ballot boxes; that they were then to be counted according to who they were cast for?—A. Yes, sir.

Q. You remember that, do you?—A. Yes; I remember that.

Q. Now, that is the only change you know of in instructions that you received from any of the commissioners until Friday afternoon?—A. Yes, sir.

Q. As far as you know?—A. Well, now, I am not positive whether it was Friday afternoon; it was along the latter part of the week.

Q. Now, then, on that occasion Commissioner Dempsey stated that the numbers of ballots, excepting those in dispute, should not be kept by the watchers. Is that right?—A. Now, he said that the watchers had no right to keep any of the numbers. The way he brought it out there, that we had no right to keep any of the numbers or handle any ballots.

Q. It was the general understanding of the entire recount that a Democratic deputy commissioner or a Republican deputy commissioner could challenge any ballot?—A. Yes, sir.

Q. And that any ballot so challenged by one side or the other was to be put in an envelope marked "Disputed ballots" and that envelope, as you understand it, was to be sent to the board of election commissioners?—A. To the board of election commissioners, and let them decide. And if we had ballots, for instance, in the poll book when they was counted that had two numbers, and we had one over, we would then put that ballot in the envelope and send it in to the election commissioners to decide it.

Q. With the statement that there was one over?—A. Yes; with the statement that there was one over in the number.

Mr. Barrett. Did you see if Mr. Bogy or myself representing Mr. Hawes—if we wanted to dispute any ballots we could have it referred?

A. I guess it was.

Q. Well, didn't we do that?—A. I wasn't paying much attention to that.

Q. Don't you know that Mr. Bogy made complaints and had them referred to the board of election commissioners for decision?—A. Well, the only time I had anything at all was the time I spoke to him about it.

Q. Do you recall Mr. Bogy or myself being there on a question as to whether a ballot should be counted, or how it should be counted, and that when we could not agree we could have it referred to the board for decision?—A. I don't remember that.

Q. You don't recall much about my activities around there at all, do you?—A. No, sir.

Q. And you were there all the time?—A. No, sir.

Q. Did you see me much around there?—A. I did not see you, not often.

Q. Did you see me going around any of the tables questioning ballots and suggesting they be referred to the board for decision?—A. I could not say that.

Q. If that occurred, you know nothing about it?—A. I know nothing about it.

Mr. Hawes. You did see Mr. Bogy, whom you know well, going from table to table?

A. Well, I wasn't watching much of that kind.

Q. He went to your table?—A. He did; he was to our table.

Q. You made a report to him each evening of the result of the count during that day?—A. I did.

JOHN F. JAEGER, of lawful age, being produced, sworn, and examined, on the part of the contestant, deposeth and saith:

Direct examination by Mr. Feigenbaum:

Q. What is your name?—A. John F. Jager.

Q. Now, what is your occupation?—A. I live in the twenty-first ward, the twenty-second precinct.

Q. Now, what is your occupation?—A. Well, I am an ex-deputy sheriff.

Q. Where do you live?—A. 4138 Green Lea Place.

Q. You were a deputy sheriff until when?—A. The 1st of January.

Q. The 1st of January of this year?—A. That is the first of this month; yes, sir.

Q. Now you are employed by Mr. Bogy as watcher during the recount?—A. Yes, sir.

Q. What table were you at, if you know the number?—A. Well, since he questioned me here I have learned the first table I was at was No. 3.

Q. And then you were changed to another table?—A. No. 9.

Q. Now, Mr. Jaeger, you were present in the office of the board of election commissioners on the morning of the 12th of this month, being Wednesday, when the recount was started?—A. No, sir; we started at 1 o'clock.

Q. One o'clock of that day?—A. One o'clock of the 12th.

Q. Wednesday, the 12th?—A. Yes, sir.

Q. Were you present when Judge Arnold read any rules to the clerks and judges and watchers as to how to conduct themselves during the recount?—A. Judge Arnold?

Q. Judge Arnold is the large gentleman of the board, the chairman of the board. You probably were not there, I understand; that was read in the morning.—A. Yes, sir.

Q. Now, can you recall any instructions given by any of the members of the board with reference to keeping notations or any other matters in the conduct of the recount? If so, give us the substance of such instruction.—A. Well, Mr. Dempsey—that is the gentleman with one arm——

Q. Yes.—A. He came out and told the judges that the watchers were not to interfere in the count; they were not to handle any ballots, or words to that effect. I wouldn't say whether those are the exact words.

Q. Did he say anything with reference to keeping notations or memorandums by the watchers? I am not asking for the exact words, but just the substance of what you recall?—A. We could keep notations, but we were not to handle any ballots, or not to take any numbers of ballots.

Q. You were not to take any numbers on these?—A. Yes; unless the judges decided voluntarily—decided to give us.

Q. Did he say whether or not you could keep or could take the numbers of any ballots where they had been scratched and any similarity of handwriting noted?

Mr. Barrett. I am going to ask you, if you please, to ask the witness to testify to what was said and done and not lead him.

Mr. Feigenbaum. I am just doing that to expedite the thing.

A. Well, the first table I was—I was at somewhat of a loss as to what I was to do, and until I came to the second table that I thoroughly understood my duties there. I knew I was to get as much information as I possibly could, but they didn't hesitate at either one of the tables to give me all the information I wanted, except that I wasn't to handle any ballots whatever.

Q. Now, with reference to numbers, that you said a minute ago that Mr. Dempsey said you could not keep, did you undertake to take down any numbers of ballots?—A. Oh, yes; I have notations in my pocket right now.

Q. Will you look at those?—A. (Witness producing roll of papers.) That, if I remember aright, was at No. 3 table, the first table I was at.

Q. That is precinct 8, ward 3. Are there the papers you were to turn over to Mr. Bogey?—A. Yes. He never asked me for them.

Q. Now, Mr. Jaeger, you kept a memoranda of what you could get as to what occurred during the contest of the recount?—A. Yes, sir.

Q. Now, that memorandum was for the purpose of placing in Mr. Bogy's hands a list or sheets showing what had been done at those tables, is that correct?—A. Yes, sir.

Q. Did you keep any memorandum showing any numbers of scratched ballots?—A. You mean the numbers of the scratched ballots?

Q. The numbers of the ballots; not how many ballots had been scratched, but the numbers of the particular ballots scratched?—A. I might answer that if I refer to——

Q. No. I don't want you to refer to any sheets now, because there are no sheets in evidence.

Mr. Barrett. He can do it for the purpose of refreshing his memory.

Mr. Feigenbaum. Can you recall offhand any numbers of scratched ballots you took down at all?

A. No; I could not.

Q. Do you recall now the statement of Mr. Dempsey with reference to keeping any numbers of ballots?—A. Well, I wish you would put that in another form.

Q. All right. I will ask you if you remember what Mr. Dempsey said in his statement Friday morning.—A. Not Friday——

Q. Either morning or about noon, whenever it was, with reference to the watchers, judges, or clerks keeping any track of the numbers of ballots?—A. Well, I would not say what day.

Q. What was the conversation; what was the statement as best you recall, or instructions?—A. He said the watchers were not to interfere in any manner in the counting of the ballots, or they were not to handle any of the ballots.

Q. Now, do you recall the announcement of Mr. Dempsey with reference to what the judges or clerks were to do regarding evidence of fraud, or anything of that kind?

Mr Barrett. I object to that line of examination, suggesting the answer. Just answer what was said and done. This gentleman was a deputy sheriff, and he understands the rules of evidence.

Mr. Feigenbaum. I asked him that before. You objected because there was no showing of time and place.

Q. What statements did you hear made by Mr. Dempsey during the Friday, that was the third day of the contest?

Mr. Hawes. I object to fixing the time. I object to leading the witness, because it has been shown here that only one statement was made by Mr. Dempsey at one time, and the proper way to interrogate a witness is to ask him what statement Mr. Dempsey made, and when.

Mr. Feigenbaum. Now, in order to refresh the memory of the witness and to let him understand what statement I am calling for, when he was there over a period of five days, I have to confine my question to some particular statement, as against any and all statements which have been made by Mr. Dempsey.

Mr. Hawes. Only one statement made by Commissioner Dempsey and two statements made by Commissioner Arnold, which is well known to counsel.

Mr. Feigenbaum. My understanding is that Mr. Dempsey made two or three statements in the election office. That one statement was made in the large office and the second one in the smaller outer office, and I am asking this witness whether he heard this latter statement, a statement made near the door of the election commissioners' private office.

A. No, sir.

Q. You didn't hear that?—A. No, sir.

Q. Well, now, can you tell us what statement Mr. Dempsey made just before Mr. Bogy followed him with a statement, if you recall that, in the large office?—A. Well, he said we were not to take any numbers of any scratched ballots.

Q. Mr. Dempsey said that?—A. Mr. Dempsey said that.

Q. And what did Mr. Bogy reply, if anything?—A. Well, Mr. Bogy said to the effect that if he did not get a square deal there he was going to take it to Congress and have them make a recount of the contest.

Q. Did Mr. Dempsey further reply or not, according to your recollection?—A. Not to my recollection.

Mr. FEIGENBAUM. That is all.

Cross-examination by Mr. BARRETT:

Q. Now, Mr. Jaeger, you were at two tables; is that right?—A. Yes, sir.

Q. You were at table No. 3, I believe, and table No. 9, and the gentlemen at table No. 3 were O'Riley and Harlan, Democrats; Smith and Haas, Republicans; is that right?—A. O'Riley; and I never learned the other Democratic judge's name.

Q. Smith was a Republican?—A. Smith was Republican.

Q. Now, at table No. 9, Emerson and Green were the Democrats and Mond and Nester the Republicans?—A. Yes, sir.

Q. And you were at either one or both of those tables from the time they begun the recount until it was finished?—A. Yes, sir.

Q. And you finished your work about what time of Monday?—A. About 7 o'clock Monday.

Q. That was the twenty-seventh ward that day?—A. As good as I can recollect.

Q. Twenty-sixth—we started working on the twenty-sixth ward and part of the twenty-seventh on Saturday?—A. Yes, sir.

Q. Now, then, for the purpose of refreshing your memory, was that not the day when a dispute came up and this announcement was made by Commissioner Dempsey when you were working on the twenty-sixth and twenty-seventh wards? Does that refresh your memory, and wasn't it on that day that Mr. Dempsey made this remark in regard to keeping the number of the ballots that were scratched?—A. Not to my knowledge or recollection.

Q. You can not fix it by that?—A. I could not.

Q. You can not fix the date either?—A. Not positively.

Q. Do you know what ward you were counting in at the time Mr. Dempsey made that statement?—A. Well, I can only guess that it was the third ward.

Q. The third ward?—A. On Wednesday evening, but I would not say positive.

Q. You don't know whether it was Wednesday, Thursday, Friday, or Saturday?—A. I would not say it was Wednesday; I would not say it was Thursday; probably it was Thursday.

Q. Probably Thursday?—A. Yes, sir.

Q. You can not give us any reasonable idea as to the day?—A. I couldn't give you a definite answer as to that.

Q. You would not undertake to do it; is that right?—A. Yes, sir.

Q. Now, then, while you were at either one of those tables, you say that the recounting clerks gave you any information that you wanted that they had on their sheets. You didn't see them miscount ballots or do anything wrong at either one of those tables?—A. No, sir.

Q. You have no complaint or criticism about the recounting, have you?—A. None whatever.

Q. When you were at the No. 9 table you ran over and looked at ballots?—A. No, sir.

Q. And handled them?—A. No, sir.

Q. I thought I saw you handle them?—A. You might when two of the judges, the Democrat and Republican judge, asked me to count them again. You know they had counted the ballots and were not sure they had counted them correctly, and then they requested me to count upon one instance.

Q. So that at table No. 9 the recounting clerks asked you to recount the votes when they were not sure that they had recounted them correctly?—A. Yes, sir.

Q. Asked you to count them and verify their count?—A. Yes, sir.

Q. Did your count verify theirs?—A. Yes, sir.

Q. So you did handle them?—A. Yes, sir; to that extent.

Q. Do you recall the incident of my going to the No. 9 table and a ballot being handed to me and Mr. Bogy and I having examined it in your presence and the question to us whether it should be counted for Bogy?—A. Yes, sir.

Q. And I suggested, when they could not agree, it should be put in the disputed envelope and referred to the board for decision?—A. I remember you said if the judges could not agree, they should be put in the disputed ballots, the disputed envelope.

Q. Don't you recall the incident, when I was called to the table, and Mr. Bogy called to the table, and we could not agree, and I suggested, "Let's not merely argue about it, but let's put it in the disputed envelope and refer it to the board for decision," didn't I?—A. Yes, sir.

Q. That occurred at the other tables?—A. Well, I never observed the other tables.

Q. But it occurred at your table?—A. It occurred at No. 9.

Q. So when that was done, a notation was made of it on this sheet by the recounting clerks?—A. Yes, sir.

Q. And it was put in this column on the right-hand side headed "Disputed ballots"; the number of the ballots in dispute were put in that column?—A. They made notations on the paper there.

Q. Giving the numbers of the ballots?—A. Of the ballots; yes, sir.

Q. That were disputed?—A. Yes, sir.

Q. So you would pick out the particular ballots that was in dispute?—A. Yes, sir.

Q. And those ballots were passed upon by the board as to whether or not they should be counted for either candidate or not counted?—A. I don't know whether they would pass——

Q. Referred to them?—A. Yes, sir.

Q. Afterwards an announcement was made by the board, through its chairman, Commissioner Arnold, that the duplicates—were you there the second and third day, when the board made an announcement, through Chairman Arnold, when the number of the ballots in the box did not exceed the number of names on the poll books, then they were to count the duplicate ballots?—A. Yes, sir.

Q. You remember that statement?—A. Yes, sir.

Q. And after that time, then, the duplicate ballots were not put in the disputed envelopes where the number in the ballot box did not exceed the number on the poll books?—A. No, sir.

Q. But they were counted for the candidate whose name appeared on the ballots?—A. Yes, sir; the duplicate ballots were counted.

Q. For both sides?—A. Yes, sir.

Q. Is this not the statement Commissioner Dempsey made—that you were not to take the numbers on any ballots except those ballots that would be referred to on the sheets made by the recounting clerks?—A. I wouldn't want to say positive that he made that statement.

Q. Well, do you want to be understood as saying, Mr. Jaeger, that he did not make that statement?—A. I don't want to be understood to say that he did not make that statement.

Q. Do you want to be understood as saying that you could not take the numbers of any ballots, even though they were disputed ballots?—A. That was my first impression.

Q. I hand you here a sheet, ward 3, precinct 12, made up by Greene, Mond, Emerson, and Nester, showing numbers of the ballots in the extreme right-hand column under the heading "Disputed ballots," and ask you there if it is not recorded under the head of "Disputed column" the number of each ballot that is in dispute?—A. Why, I would say yes.

Q. Now, did you want to be understood to say that Commissioner Dempsey's announcement was that you could not take those numbers?

Mr. Feigenbaum. I think the witness has already answered he doesn't know; that his recollection is not clear.

Mr. Barrett. Well, I want to get at it. I am conducting this examination.

A. Well, my first impression was that we were not to take any such numbers of disputed ballots after Mr. Dempsey made this remark; but I know at No. 9 table we got the numbers of all of them; the judges gave them to us.

Mr. Feigenbaum. By "all of them" what do you refer to?

A. Of any disputed ballots; any information I asked for.

Mr. BARRETT. You got any information you asked for? In other words, you could get the information that was contained on those sheets?

A. I could get that information: yes, sir.

Q. You could get a complete copy of them if you wanted to?—A. Yes, sir.

Q. And in some instances copies were taken?—A. Well, I would ask the question and they were answered me.

Q. You did take some memorandums: you noted it down?—A. I would note it down.

Q. You did take some memorandum; you noted it down on sheets?—A. Yes, sir.

Q. Have you those sheets with you?—A. Yes, sir.

Q. Let me see them, please.

Mr. FEIGENBAUM. I want to make a statement before these sheets are produced. We are perfectly willing to let contestee and his counsel see every sheet that was made up by our watchers and every sheet that was made up by contestant himself, provided contestee and his counsel will also let us see every sheet that his watchers made up, and not until then. The sheets that the witness has in his pocket were made for the benefit of contestant, and we will not consent to letting counsel for contestee see those sheets until he shows us the sheets that his watchers kept.

Mr. BARRETT. Mr. Jaeger, I am asking you the question. Will you permit me to see them? Do you have any objection to letting me see them? Do you have any objection to my looking at them so as to get the information as to what notations were taken?

Mr. FEIGENBAUM. I submit that those sheets are the property of Mr. Bogy, taken for his benefit, and this witness should not be called on to turn over any sheets which belong to contestant.

Mr. BARRETT. Let the witness answer the question.

A. Mr. Bogy hired me to make notations of what I observed on these tables where the recount was being made, and I think it proper to give him these notations.

Q. Well you have some sheets here which you exhibited in this room to Messrs. Bogy and Feigenbaum, his counsel; is that right?—A. Yes, sir.

Q. And they asked you some questions or statements concerning them, and then you put them back in your pocket?

Mr. FEIGENBAUM. No; I submit I asked no questions concerning any sheets.

Mr. BARRETT. Personally, not in the records.

Mr. FEIGENBAUM. I submit we discussed those sheets with our watchers the same as contestee discussed with his, and we have not yet received any of those sheets, and until we see those sheets we are not willing to show ours.

Mr. BARRETT. When Mr. Feigenbaum is through making a stump speech, I will ask the witness, Do you have any objections to my looking at those sheets in your pocket that you made at the time of this recount?

Mr. FEIGENBAUM. I want the record to show that I am not good at stump speaking; that contestee and his counsel have made more stump speeches than I have ability to make.

Mr. BARRETT. What is your answer?

A. I prefer to give these notes to Mr. Bogy and let him do as he pleases with them.

Q. Am I to understand from that you will not let me examine that now; is that right?—A. You mean the two sheets that I showed——

Q. I mean you have a number of sheets in your possession that you made the statement that you took notations on during the progress of the recount, some of which you exhibited to Mr. Bogy and his counsel in this room, and are now in your pocket and have been on the table. I ask you if you have any objections to allowing me to look at them for the purpose of interrogating you with respect to the method of the recount as you observed it?

Mr. FEIGENBAUM. I object to asking this witness whether he has any objection to such a thing, because he has already said he has no personal objection, but he could not give those sheets to counsel until Mr. Bogy consented to him doing so, and that they belong to Mr. Bogy.

Mr. BARRETT. What is the witness's answer?

A. I feel that they are the property of Mr. Bogy and that he has a right to those things, and I feel like I would not be doing him justice to let anyone else see those things.

Q. Then you feel you should not grant my request without first obtaining his permission; is that it?—A. Yes, sir.

Q. Do you know Mr. Feigenbaum here, who has conducted this examination?—A. Not until to-day.

Q. Do you know what his initials are?—A. No, sir.

Q. A brother of his was employed by the election commissioners as one of the recounting clerks during the recount?—A. Well, I learned to-day that he was a brother.

Q. You saw him out there?—A. I saw him.

Q. And have you been at the board of election commissioners since the recount was concluded?—A. Have I been before the board?

Q. No; at that office?—A. I have been in the office.

Q. Since the recount was concluded?—A. Yes, sir.

Q. Didn't you see Mr. Feigenbaum around there?—A. Yes, sir.

Mr. Feigenbaum. Which one?

Mr. Barrett. I am talking about the clerk.

A. A little dark-haired fellow.

Q. You saw him there since the recount?—A. Yes, sir.

Q. And while counsel for contestant and contestee were in the board of election commissioners' private office, before the board discussing questions, you saw him on the outside there?—A. Yes, sir.

Q. Waiting around?—A. Yes, sir.

Q. How many times did you see him there?—A. I only stayed there a short while.

Q. Now, did you see him in the outer room as you came in here to-day?—A. Yes, sir.

Q. How long was he there? Was he there as long as you are waiting here to be called as a witness?—A. Yes, sir; sometimes he went out.

Q. He is still there, isn't he?—A. To the best of my knowledge.

Q. He was there when you came in?—A. Yes, sir.

Q. Did he talk to you about this case in any way?—A. No, sir.

Q. He hasn't said anything to you about it one way or another?—A. No, sir.

Q. Did you have a talk with anybody before you came down here?—A. No, sir.

Q. Bogy didn't talk to you about it?—A. No, sir.

Q. Or Mr. Feigenbaum?—A. No, sir.

Q. Or how about Hartmann?—A. Hartmann, I never even bid the time of day with him.

Q. Did you ever have any conference of any kind with Hartmann?—A. No, sir.

Maj. Hawes. I want to ask the witness one or two questions. Jaeger, you came in the afternoon of the day the recount began?

A. On the 12th of this month I started, at 1 o'clock.

Q. Did you see or read a notice pasted on the wall of the election commissioners' office containing instructions for the recount?—A. One in reference to duplicate ballots and ballots that exceeded the number of ballots in the poll book.

Q. Let me ask you if in a general way it was not your understanding that the recount was to be done by two Democratic deputies and two Republican deputies, and where any ballot was in dispute that ballot was to be put in an envelope and sent to the election commissioners' office before the board?—A. That was my understanding.

Q. Now, while you were acting as watcher for Mr. Bogy did any ballot appear about which there was a dispute which was not placed in this disputed envelope?—A. Not to the best of my knowledge.

Q. You were there, of course, at all times. I wish you would try to refresh your memory as to the time Commissioner Dempsey made his statement. See if you can not fix it by recalling to your mind the ward that you were counting at the time this dispute arose.—A. Well, I would not want to answer definitely, Mr. Hawes.

Q. No; I understand.—A. Or positively, but it seems to me that it was on a Wednesday afternoon. I may be very much mistaken, but that is the way——

Q. Well, if all the other witnesses who have testified disagree with you about that afternoon, you would not think your recollection was so definite as to make it certain?

Mr. Feigenbaum. Did you suggest what time the other witnesses said it was?

Maj. HAWES. At the request of counsel for Mr. Bogy, I will state that the other witnesses who have testified have placed this time either on Friday morning or Friday afternoon. Would that help the witness?

A. No; it doesn't reach my mind that way. I am under the impression that I was at table No. 3 and Mr. Dempsey stood near by me and made that remark.

Q. Well, do you recollect what ward you were counting at that time; that will help you?—A. The third ward.

Q. The third ward was concluded on Wednesday.

A. Well, this is Wednesday I have reference to; this is Wednesday afternoon I would not say positively, Mr. Hawes.

Q. Do you remember reading this instructions, amongst other things placed or pasted on the walls, or posted in the office containing other rules, this statement: "And all other disputed ballots to be put in the disputed envelope"?—A. All disputed ballots were to be put in the disputed envelope.

Q. Well, at the tables at which you acted as watcher for Mr. Bogy, were all ballots that were disputed placed in such envelopes?—A. To the best of my knowledge; yes.

Redirect examination by Mr. FEIGENBAUM:

Q. Just one question. You say when you were up there in the election commissioners' office since the contest that you saw many clerks around that office watching the proceedings, listening to any speeches made by contestee and his counsel, and they were very good speeches?—A. Well, whenever there was a speech, they usually rapped on the table to call attention.

Q. I mean since the recount?—A. The attention of the judges and clerks and watchers was called by rapping on the table that there was something to be said in regard to the counting of the ballots or the conducting of the recounting of the ballots. And Mr. Dempsey got up and made a little talk; if I am not mistaken, the other gentleman was Mr. Arnold.

Q. What I have reference to now is since the recount was completed. You said a moment ago you saw one of the clerks mentioned here, a brother of mine?—A. Yes, sir.

Q. Around the office once or twice; that you saw some other clerks around there?—A. Yes, sir.

Q. A good many of the clerks around there?—A. Yes, sir.

Q. Listening to the proceedings—I mean election clerks?

Mr. BARRETT. You don't mean those regularly employed?

Mr. FEIGENBAUM. Any clerks?

A. Well, there were some clerks not busy there.

Q. Would any clerks come back like yourself; you said you were back there once or twice; were there some others there?—A. Yes.

Mr. FEIGENBAUM. That is all.

Mr. HAWES. You didn't see anybody in the election commissioners' office after the contest was over excepting the regular employees of the department with the exception of Mr. Feigenbaum, did you?

A. Well, he was the only one I observed that was there in particular. The rest of them I suppose—they appeared to me to be regular employees.

Mr. FEIGENBAUM. You don't know which are regular employees and which not?

A. I didn't know them all.

WILLIAM R. SCHNEIDER, of lawful age, being produced, sworn and examined, on the part of the contestant, deposeth and saith:

Direct examination by Mr. FEIGENBAUM.

Q. Will you please state your name?—A. William R. Schneider.

Q. Where do you reside?—A. 4337 Caroline, St. Louis, Mo.

Q. Are you engaged in the practice of law in St. Louis?—A. I am.

Q. Where is your office located?—A. 1554 Pierce Building.

Q. Mr. Schneider, were you in the office of the election commissioners of St. Louis on January 11 when—that was on a Tuesday, when some discussion took place regarding the signing of a stipulation in the Bogy-Hawes contest?—A. Now, I do not remember the exact day, I remember it was the day after the inauguration of the governor; that was on a Tuesday, I don't remember what the date was.

Q. Well, that is right, that is the 11th. Do you recall the discussion there before that stipulation was signed?—A. Well, yes; I do.

Mr. BARRETT. Are you going to contradict the terms of an instrument by oral testimony?

Mr. FEIGENBAUM. No; we are going to show by this witness——

Mr. BARRETT. Go ahead and ask your questions. I will make no objections.

Mr. FEIGENBAUM. Will you please state in your own way what took place and what conversations were had there between the election commissioners and any statement made by Mr. Bogy, Mr. Bauer, and Maj. Hawes, Mr. Barrett, and Mr. Cummings, regarding the stipulation?

Mr. BARRETT. I am going to object to that question because it has already been shown that the agreement and what was done between parties to this contest was reduced to writing in the form of a stipulation which has been introduced and read in evidence, and this testimony is not competent for the purpose of explaining or contradicting an agreement made by parties in writing.

Mr. HAWES. I desire to interpose another objection. This was a meeting of the board of election commissioners in response to a subpœna, and there were present in that room a notary public, contestant, contestee, and their counsel, and the secretary of the board, Miss Bobb, and if there were any other persons present no record was made of their presence; they must have been there in an informal capacity. Certainly there was no one there during the entire time of the discussion, including the signing of the agreement. So that no witness would be in a position to testify to the accuracy of the proceedings who was not there continuously throughout the entire negotiations leading up to the preparation and signing of the stipulation by contestant, his counsel, contestee, and his counsel; and if this witness was present, it was without the knowledge of the contestee or members of the board or the notary.

Mr. FEIGENBAUM. I want to say regarding the last objection, our purpose in introducing this testimony is not to contradict the terms of any stipulation but to explain what took place there, so that such stipulation can properly be interpreted, and to indicate the manner in which the stipulation and its terms were understood. Further, that it does not matter in what capacity a witness was there, if he heard statements he may so testify. Now, will you please answer?

A. When I came into the election commissioners' office I stopped at the door, I stood in the doorway, and Judge Arnold was at that time dictating to the lady stenographer this stipulation that you have mentioned. And it seems that the members of the board were unable to agree upon the terms of that stipulation. And then Judge Arnold ordered it crossed out and started over again. And, of course, different members were talking about the terms of the stipulation. Part of the time members of the board would mention things that they thought ought to be in there, and then again the attorneys for the two parties. The sum and substance of what was agreed upon to be put in the stipulation was that a record was to be kept of the ballots, the straight Republican ballots and the straight Democratic ballots, and the scratched Republican ballots and the scratched Democratic ballots, and the same as to the other parties. And then the question came up, Mr. Bogy mentioned this subject, that in the event that there were a number of ballots—he said, "Suppose there were 50 ballots where it was obvious that there was the same handwriting appearing upon each ballot?" He said, "If anything like that appeared, I would want the privilege of taking photographs of all to show the similarity in the handwriting." And then he brought up the question of the number of the ballots in the box as compared to the number of the registered voters. "Now," he said, "if it is possible that there might be 500 ballots in the box when you show there were only 400 voters in that precinct," he said, "some notation should be made of that." And, of course, there was a good deal of talk back and forth, but, as I understood, that was agreed upon, that a record should be kept of any such discrepancy or similarities in the handwriting on the ballots, so that Mr. Bogy could, if he so desired, make photographs of the ballots, and also a memorandum should be kept of these discrepancies between the ballots and the number of voters, and any other errors in the ballots that they were unable to agree upon, he might have a memorandum kept of that. From time to time Judge Arnold dictated parts of this stipulation, and then parts would be crossed out. I left after the thing had been completely agreed upon. Let's see, this point came up, about the constitutionality of looking at the poll books with a view of ascertaining who it was cast the ballots in a certain way, and I remember that Judge Arnold said it was not necessary to place that in the stipulation because it would be unconstitutional to look into that phase of it anyway, as they could not violate the secrecy of a ballot. I remember that Mr. Barrett was insisting on having in there at the end of that stipulation that these depositions were to be taken on the time of the contestant. There was some wrangle about that. I believe that was the final thing that was agreed upon, and then the stenographer was told to go in and write it up. Now, I did not stay there until it was written up and signed, but I stayed there until this stenographer was told to go in there and write it up, after Mr. Barrett had insisted upon this provision being stuck onto the end of the stipulation, that it was to be taken on the contestant's time.

Q. Now, Mr. Schneider, did Judge Arnold have charge of that meeting?—A. Well, he seemed to be presiding; yes. There was Judge Arnold, sitting at the west end of the table; next to him sat Mr. Dempsey; and then, Mr. Buder; and then, around at the east end of the table, sat Mr. Bogy; and then, Mr. Barrett; and then, Mr. Hawes—or Mr. Cummings; and then, Mr. Hawes; and then, the stenographer; and then, Mr. Grodzky.

Q. And was Mr. Lammert also there?—A. I don't know Mr. Lammert, if he was there. There were some others there whom I did not know, but I remember all these gentlemen.

Q. Now, Mr. Schneider, what did Judge Arnold say when Mr. Bogy asked or said he wished a record kept of all the scratched ballots or where a similarity of handwriting appeared?—A. Why, Judge Arnold picked up one of those books there and said there would be kept a record of the straight Republican ballots and the straight Democratic ballots and the scratched Republican ballots and the scratched Democratic ballots and so as to the other parties. And then, Mr. Bogy brought up these other questions about keeping the records of these discrepancies, and the ballots having similar signatures, and mentioned the fact that he might want to take photographs of them.

Q. Well, now, when Mr. Bogy said he might want to take some photographs of those, what did Judge Arnold say?—A. He acquiesced in that; I heard no dissent to that.

Q. Did any one say whether or not he could do that under the stipulation?—A. I heard nothing to that effect.

Q. You recall, though, very distinctly, he did insist on his rights to take photographs where there was a similarity of handwriting, and also that he desired to keep a record of scratched ballots?—A. Oh, there isn't any question in my mind about that.

Q. Did Judge Arnold say a note would be kept wherever there was a similarity in handwriting?—A. He said that a record would be kept of these apparent discrepancies, and so that as to any of those Mr. Bogy—a complete record would be kept of these discrepancies, and especially as to the similarity of handwriting, and if you wished to take your photographs, then you can do that.

Q. Now, Mr. Schneider, you went up to the election commissioner's office that evening without any particular view?—A. Well, I had occasion to go to the recorder's office that morning, I believe it was to file some papers, and then I went over to the election commissioner's office to see a man who was formerly deputy State factory inspector, with a view to getting him to testify in a certain case; and then I saw all these people in the election commissioner's office. I saw Mr. Bogy, whom I had known for years, and, of course, having read about the contest in the papers, why, I stopped at the door there and listened to what was going on.

Q. You went over to see some man who was formerly a State factory inspector with a view to having him subpœnaed as a witness in some case you were interested in?—A. I had previously talked to him about a case in which I was personally interested.

Q. Was that man in the election commissioner's office?—A. Yes.

Q. A clerk?—A. He is a clerk there.

Q. He is a clerk there in the election commissioner's office. I believe that is all.

Cross-examination by Mr. Hawes:

Q. What time did you arrrive at the election commissioner's office?—A. Well, I don't remember the exact hour, somewhere, I should judge, between 9 and 10, according to my best recollection, I don't know just exactly the time.

Q. When did you leave?—A. Well, I stayed there quite a while, probably left after Mr. Barrett had finished his argument, or his insistence upon that final provision of the stipulation to the effect that this should be upon contestant's time, when that was finally agreed upon, and then the stenographer was told to write up the stipulation.

Q. Mr. Schneider, it is important that you should fix approximately the time that you left there, because this discussion continued for a considerable length of time. Did you leave there at 11 o'clock or 11.30, or prior to 11 o'clock?—A. It took a great deal of time, I know; I stood there quite a while, but as to the exact hour now I can not exactly recall that.

Q. Where did you go when you left the election commissioners' office? You certainly can remember where you went after you left the election commissioners' office.—A. I can not now; I might by looking at my diary in my office, but I dont' recall.

Q. But at this time you remember the actual detailed conversation of those there, but you don't remember where you went to after you left the election commissioners' office, nor the time that you left the commissioners' office?—A. Well, I know it was some time around 11 o'clock, might have been a little after or a little before, but just what I did after that, whether I went back to my office, or whether I stopped somewhere before I went back to my office, I can't just now recall.

Q. Mr. Schneider, you are a lawyer; you can understand the importance of setting the time during which you heard a portion of this conversation, because you had no knowledge of what preceded or what followed.—A. I only testified to what I heard while I was there.

Q. You can understand the necessity of stating the time. Will you say it was 11 o'clock, a quarter to 11, or a quarter after 11 when you left there?—A. Well, now, Mr. Hawes, you can only approximate the time when anything like that is going on; I could tell you within a second, and I don't suppose you can tell within 5 or 10 minutes of the actual time you left that commissioners' office.

Q. I am not asking you to tell me within a second; I am not asking you to tell me within a minute; I am asking you to tell me within one-half hour.—A. Well, I should say that it was—it might have been 15 minutes before or 15 or 20 minutes after 11 o'clock.

Q. But not later than that nor earlier than that?—A. I recall that I went to lunch very shortly after that.

Q. Well, you can not recall at this time where you went from the election commissioners' office?—A. I went back to my office, but whether I stopped somewhere on the way down I don't now recall.

Q. Do you remember the time that you arrived at your office?—A. I could not fix that time within half an hour; my best recollection is that it was somewhere around a quarter after 12 that I arrived at my office.

Q. Were you at the election commissioners' office at any time during the recount after that morning?—A. I was there once; I was up at the recorder's office again on this same proposition that I was up there on that day, and then I had noticed that the recount was going on, and I thought I would just drop in there to see what was going on, and I stopped there for about a minute, and then I went out again.

Q. And where was Mr. Bogy at that time?—A. I saw Mr. Bogy there.

Q. You talked to him at the window, as a matter of fact?—A. I talked to him at the window for about a minute or less.

Q. What day was that?—A. I couldn't tell that day either; I couldn't recall the day now; I could by looking at my office diary, I suppose.

Q. Mr. Schneider, you stated with great detail the conversation that took place and yet you can not remember the time of your arrival and the time of your departure from the election commissioners' office. I will give you an opportunity again to state the time.—A. I have stated it as near as any reasonable person who does not go there with a view to keeping an exact memorandum of the time that he was there. I had not expected to be called upon to testify. If I had surmised that, I might have taken out my watch, but I didn't do it.

Q. How long have you known Mr. Bogy?—A. Oh, I have known him in a casual way for the last six years, I should judge.

Q. Have you had any business connections with him?—A. No.

Q. What is your politics, Mr. Schneider?—A. Well, I am sort of independent with Republican leanings; in fact, I have been at one time a candidate on the Republican ticket for alderman, but I vote for Democrats as well as Republicans.

Q. At the last election whom did you vote for for President?

Mr. FEIGENBAUM. Now, we make no particular objection, but I suppose Mr. Schneider knows, of course, his rights under the question; that he does not have to answer as to whom he voted for any particular office. I do not think that that question should be asked.

A. I can answer who I voted for if he wants to know that.

Mr. HAWES. I ask you who you voted for for President?

Mr. FEIGENBAUM. I think that is unfair to ask a voter to divulge that which is given him the right to keep secret.

Mr. HAWES. Mr. Schneider can refuse to answer if he desires. Counsel has very carefully kept the secretness of the ballot box by suggesting to witnesses on different occasions that they should not answer this question. He has, on the other hand, been rather careless about information going from the election commissioners' office relating to the number of the ballots of individual voters by which this information could be taken to the contestee and the secrecy of the ballot destroyed. I will ask Mr. Schneider if he——

Mr. FEIGENBAUM. Before the witness answers, so as to keep the record clear on that, I think that that remark is not exactly in accordance with my objections heretofore made, that I have objected to the witnesses disclosing for whom they voted for a particular office; but in the past, in other witnesses who were not lawyers, and who could not be expected to know their legal rights, I have asked the notary to inform them that they were not compelled to disclose such information unless they saw fit to do so. Regarding us seeking numbers of ballots, that was for the pure purpose of properly conducting this contest. That can not be said of a question asking a voter for whom he voted for some other office than that here involved.

Mr. HAWES. Mr. Schneider is a lawyer.

The WITNESS. Why, I have no objections to stating that I voted for the Republican electors as to President. But if I had voted for the Democratic electors, it would not have changed my recollection of facts as to what I heard at the election commissioners' office.

Q. You stated the various positions at the table, and that Commissioner Arnold was dictating a statement while you were present. You, of course, know that Mr. Arnold is chairman of the board of election commissioners.—A. So I understand; yes.

Q. You did not understand it at that time?—A. Oh, yes, I had known that. I have known Judge Arnold for a number of years very well, play golf with him, and tennis.

Q. And any statement that he may have dictated, it was on the part of all members of the board, unless they objected to it?—A. Well, there was a good deal of objection back and forth; yes. As I understood, why, he was attempting to get the two sides together upon common ground.

Q. Now, I want to ask you, Mr. Schneider, if you heard contestant, contestee, or any of his attorneys objecting to anything that was placed in that stipulation? Did you hear me or Mr. Barrett or Mr. Cummings object to anything going in that stipulation?—A. Why, there were objections back and forth right along.

Q. I asked you to state whether I made any objections to anything going into that stipulation?—A. I remember distinctly that you were frequently saying to Mr. Barrett, "We want to be perfectly fair in this matter," and things of this kind, but Mr. Barrett from time to time made objections and insisted on other clauses being put in the stipulation.

Q. Don't you know as a matter of fact what the single clause in the stipulation that Mr. Barrett did have inserted in the final clause—— A. Well, I testified to that a moment ago, as to what he was insisting upon.

Q. Now, as a matter of fact, Mr. Schneider, and to assist your recollection, the only matter caused to be inserted in this entire stipulation was this. I will read it to you to refresh your memory:

"*Provided, further*, That nothing in this stipulation shall preclude the contestee from making an examination of the ballots during the forty days' time allowed to him by law, provided that the contestee does not waive any objection he may desire to make as to the competency, relevancy, or materiality of any testimony offered on behalf of the contestant shown in the recount."

A. Yes.

Q. I ask you if there was any matter other than that that I have stated that Mr. Barrett asked be placed in that stipulation?—A. Well, I recall this: That a number of times the stenographer would cross out what was dictated by Judge Arnold, and other times I recall that Mr. Barrett would interpose a suggestion; but as a rule, Judge Arnold would make the statement as to what would go into the stipulation.

Q. You mean that you refuse to answer my question yes or no?

Mr. FEIGENBAUM. I submit——

A. Well, I don't refuse to answer your question yes or no. I think I have answered it.

Q. Well, can you answer my question yes or no?

(Last question read.)

A. I do not think that he insisted upon any full clause, but I do recall that at times when Judge Arnold would start to dictate something, and one of the other commissioners would mention something in addition that should go in there, or now and then Mr. Barrett would mention some suggestion as to what should go in there, but I don't think he dictated any one complete clause; except in this last part he was insisting that that should be placed in the stipulation, that it should be upon the contestant's time that these depositions were to be taken, and that you would take your full time afterwards; that is what he was insisting upon.

Q. Were you present when the final stipulation was completed?—A. Not when it was written up; no. I left there after everything had been agreed upon, and the stenographer was told to write the thing up. I didn't stay there for her to write it up, or for the parties to sign it. I don't know whether you ever signed it or not.

Q. You don't know whether there were any changes made after you left?—A. Well, apparently everything had been agreed upon and there was no further discussion.

Q. Well, if as a matter of fact the stipulation was rewritten did you have any knowledge of its being rewritten or changed or altered after it was put into typewritten form?—A. Well, I don't know as to what you might have done after you had agreed upon it and there were no further objections. I remember that the impression that I had was that it was a final understanding, and I heard no further objections.

Q. Mr. Schneider, do I understand you to state that after this stipulation was dictated the first time, that there were no changes made in the stipulation, and that it was not rewritten?—A. No; I didn't say that, Mr. Hawes.

Q. You don't know anything about that?—A. Yes; when I first came there, Judge Arnold was crossing out practically everything that had been dictated before that and he said, "We'll start over again," but he did not start over entirely.

Q. Did you hear anybody dictate but Judge Arnold for the board?—A. Well, once in a while the others would interpose something, but I don't recall that anybody else dictated a complete clause; I don't now recall that they did. Judge Arnold was doing most of the dictating; once in a while one of the others would say something.

Q. Did you see Mr. Cornelius Bauer in the room?—A. Yes, sir.

Q. Did you hear him make statements from time to time and ask questions from time to time?—A. Yes.

Q. Did you hear Mr. Bogy do that?—A. Yes.

Q. And Mr. Buder?—A. Yes, sir.

Q. And Mr. Dempsey?—A. Mr. Dempsey——

Q. And all the commissioners?—A. Yes.

Q. I will ask you to read over this stipulation and state whether that is the same stipulation that was dictated the first time after which you said you left before it was reduced to writing, this being the stipulation already introduced in evidence in this record? [Hands witness paper.]—A. Of course, I can not remember every detail verbatim of the stipulation as it was dictated in its final form, but I do recall that all these matters were discussed there. I now remember very well this clause, it says: "*Provided further*, That nothing further in this stipulation shall preclude the contestee from making an examination of the ballots during the 40 days allowed." This one here: "*Provided*, That the contestee does not waive any objection he may desire to make as to competency, relevancy, or materiality of any testimony offered on behalf of the contestant or shown in the recount." Then I recall that Mr. Bogy got up and said, "All right, put that down for me, too."

Q. You are correct about that. Do you remember the chairman of the board stating that usually the board was directed by an order of court as to the manner of the examination and the extent of the examination to be made by the board?—A. I can not recall that statement offhand; no.

Q. Do you remember the chairman of the board, prior to any shorthand notes having been made, and evidently while you were present, requesting Mr. Bogy and his counsel to reduce to writing the exact things that they wanted done by the board?—A. Your question assumes something that is not true, because when I arrived there shorthand notes had already been made, because I recall that Judge Arnold asked the girl, the young lady there, to scratch out what had been written.

Q. Well, then, I am to understand that you did not hear any of the discussions prior to the time they were being dictated by Judge Arnold?—A. No. There had been discussions before I arrived, and when I arrived there Judge Arnold was still trying to get together with the contending factions on what should be contained in this stipulation, and then he said, "Cross that out and we will start over again."

Q. At the time you arrived there then—let's get this time right—Judge Arnold had begun his dictation?—A. He had already dictated some before I got there, because he had asked the girl to cross it out and we would start over again.

Q. So you did not hear the discussions leading up to the actual dictation of the stipulation?—A. No; no; I did not.

Q. You were not there then when Judge Arnold requested Mr. Bogy and his counsel to reduce to writing the exact things that they wanted the board to do for them?—A. No; I don't recall that.

Q. And yet you arrived at about what time?—A. I think shortly after 10 o'clock, somewhere around 10 o'clock. I don't know just when. All that I know is that Judge Arnold must have dictated something, because he told the girl to strike out what he had dictated and we would start over again.

Q. Were you there when I made my statement, a written communication for the records of the board, stating I would have no objections to any form of recount and would not cause delays, etc.; did you hear me make such a statement?—A. No, sir.

Q. Then, you arrived after that time?—A. If you made any statement, I arrived after you made the statement, because you did not read any when I was there.

Q. And you left there somewhere between a quarter to 12, a quarter to 11, and a quarter past 11?—A. Well, I could not say just the exact time; my recollection was that it was somewhere around that time; it might have been half-past 11, might have a quarter to 11, I can't say exactly. My recollection is that I arrived at my office at about a quarter after 12.

Q. You can not remember now where you went to after you lift the election commissioners' office?—A. I don't recall whether I stopped at any place on the way back from the election commissioners office or not.

Q. Were you present when any addition to the stipulation or rules governing the recount were dictated and submitted to Mr. Bogy, myself, and our counsel?—A. I don't recall rules governing the recount being dictated. When I left there this stipulation was dictated and the girl was told to write it up. Now, what may have been dictated about rules governing that, I didn't hear that.

Q. Were you there when a discussion was being had as to the form of memorandum to be used by the clerks who were making the recount?—A. Well, all during this time that this stipulation, or the details of it, was discussed, at various times those books would be picked up there by Judge Arnold, or somebody, and it was pointed out how the record would be kept of the straight Democratic ballots and the straight Republican ballots and the scratched ones, and so as to the others. Mr. Bogy was insisting upon his rights to take these photographs in the event of handwriting, or discrepancies in the number of ballots and the number of registered voters, and so on.

Q. Were you there when it was agreed prior to any dictation——A. No; I have stated——

Q. One moment please—in which to avoid expense and delay, it was agreed that the recount should be made by the board of election commissioners under a certain stipulation?—A. Oh, I remember that the matter of avoiding unnecessary expense was mentioned at different times. If that was mentioned prior to the time of any dictation, why, I didn't hear the part that he referred to. I remember at times something like that would be interjected, but not very much of that.

Q. Mr. Schneider, can you state how long you were there prior to any dictation being undertaken?—A. I wasn't there prior to any dictation. I have stated that a couple of times, because Judge Arnold had dictated something before I had arrived there and ordered the girl to strike it out. "We would start all over again."

Q. You were there though, when, or approximately at the time, that a stipulation was being arrived at which would bind both the contestant and the contestee in the manner of the examination to be made by the commissioners?

Mr. Feigenbaum. I object to the question as to whether or not it would bind any parties, as the binding character of the stipulation will not be passed—can not be passed—on by either of the parties or any witness.

A. I was present during the time that this stipulation which you just submitted to me was discussed in detail. If there is any other stipulation or set of rules that you agreed upon in addition to that, I did not hear that.

Maj. Hawes. Wasn't the conversation that you heard and the whole trend of the discussion leading up to an agreement between the contestee and the contestant so that, first, time would be saved; second, money would be saved; and, third, that there could be no dispute arise after the stipulation had been entered into?

A. Well, Mr. Hawes, I have testified to everything as I recall it as to what transpired there. I don't recall that that was stressed so much while I was there; that was incidentally mentioned at times; but frequently the details of this stipulation that you have given me here a moment ago were discussed.

Q. Were you present when the discussion related to a recount, and in case of dispute upon any ballot that each individual ballot in dispute should be placed in an envelope marked "Disputed ballots," and given to the board to determine their legality?—A. I don't recall that they said that it was to be placed in an envelope and marked "Disputed ballot." I do recall this discussion that in the event a dispute arose among the counters that they could not agree among themselves, they were to submit it to the commissioners, and they were to rule upon it; and if Mr. Bogy felt that even after they had ruled upon it that he wanted to take photographs to show similarity, and things of that kind, or make any further record, that he might do that: that was about the substance as to what I heard as to that.

Q. As to disputed ballots?—A. Yes. In addition to keeping the record I have mentioned about the straight, scratched, and so on.

Q. Now, Mr. Schneider, it is important that your recollection on this matter shall be clear, because testimony has been taken of the members of the board and others on this subject. Did this matter of photographing relate to disputed ballots?—A. Well, I take it that it means the disputed ballots.

Q. Did you understad it so at that time, that it related to disputed ballots?—A. Well, if there was not any disputed ballots, there would not be any occasion for taking any photographs, would there?

Q. So that your recollection is that the matter of photographing was the privilege of the contestant to photograph such disputed ballots as he desired?—A. Yes; especially as—I remember especially that he mentioned the matter of similarity in handwriting upon the ballots, so that he could have that for the purpose of comparison.

Q. Did the discussion lead you to believe that the deputy election clerks—Democrats and Republicans—were not to pass upon disputed ballots, but that they were to be brought before the board?—A. Well, as I stated before, I recall that the matter was discussed, that in the event a dispute arose among the counters that they themselves could not determine by a unanimous vote, why, they would refer it to the board.

Q. Were you there when a discussion came up about each side being permitted to be represented at the counting of each box by a watcher?—A. Yes; I remember something to that effect was discussed while I was there.

Q. And that counsel for both sides were permitted to be there during the recount?—A. I remember that that was discussed.

Q. Was it your understanding that objection could be made to a ballot that was in dispute, or that somebody wanted to dispute, by the watchers, attorneys, contestant, and contestee?—A. Well, my recollection is that, as I have stated before, that the counters were to pass upon these things, and in the event that there was any dispute arose between them which they could not settle by unanimous vote, that they were going to leave it to the board.

Q. Now, returning to the matter of photograph for a moment, did the question of photography relate to the photographing of disputed ballots?—A. As I have stated before, so I understood it, because I would not see what the occasion was for photographing some that were not disputed; but principally the matter was stressed on the matter of similarity of signatures.

Q. Mr. Schneider, I hope you do not misunderstand my question in trying to arrive at the exact time, because the board was in session from 10 o'clock until—my recollection is that the board did not adjourn until about 1 o'clock, and you were there, according to your best recollection, probably only half an hour.—A. I think I was there a little bit longer than that.

Q. Well, three-quarters of an hour.—A. I was there after Mr. Buder—you know, Mr. Buder left early.

Q. Well, the board was to have met at 10 o'clock; my recollection is that it was about a quarter past 10 when we commenced our discussion; and your recollection is that you left somewhere between a quarter to 11 and a quarter past 11; so that would allow you, at the most, approximately three-quarters of an hour.

Mr. FEIGENBAUM. I want to object to that question being based on a presumption not proper under the evidence, because there is no evidence in the record as to when the board met or when they concluded; that this witness has already endeavored to state exactly what took place in the time he was there, and he should not be asked to comment on something he knows nothing about; and that the suggestion of counsel as to when the board met is not a proper method of examination of a witness, because there is no evidence in the record that the board met at any particular time, and the witness stated he didn't know when they started those deliberations.

Maj. HAWES. Mr. Schneider, I showed you a copy of the final form of a stipulation. You have read that?

A. Yes.

Q. Are you in a position to say that was the form of the stipulation when you left there?—A. As I understand it, substantially so. Of course, as I say, I would not undertake to say that I remember verbatim every word that was put into that stipulation; but I do recall that these questions were all discussed, and, as I understood, practically agreed upon in that form at the time I left.

Q. The stipulation as it went to the stenographer for reduction to the typewriter was, as you understood at that time, agreed to by Mr. Bogy and Mr. Bauer, myself and my counsel?—A. Yes.

Q. It was agreed to?—A. Yes; so I understood.

Q. You heard no objections upon the part of Mr. Bogy to it at all?—A. No. In fact, I thought that the proceedings were over, and there was nothing further that interested me. I was particularly interested, because I had never had occasion to be present at such a proceeding as that before, and so I noted it with more interest than usual.

Q. I hand you a copy of instructions read in evidence in the record directing the manner of recounting by the clerks. Were you present when that was discussed?—A. Only in an incidental manner. This paper that you hand me now, entitled "Instructions to counters," was not dictated when I was present.

Q. It was not dictated when you were present?—A. No, sir.

Q. You know nothing about that paper?—A. No, sir. Those matters were mentioned only as I have suggested in my previous testimony.

Q. I hand you now a copy of a form used by the deputy election commissioners containing the memorandum of the recount, and that also furnished watchers so that they might use the same for memorandum in a recount. This that I now hand you was used in ward 2, precinct 8. Was that under discussion while you were there, it being the same form that was used throughout the recount and is part of this record?—A. From time to time during the course of this discussion of the stipulations a sheet of paper would be picked up by Judge Arnold or some one else, to illustrate how they were going to keep a record of the scratched ballots and the different ballots; but I don't recall this particular paper or that particular form.

Q. You do not recall a discussion in which this form was changed a number of times and finally reached the form in which you have just examined it in?—A. No; only in an incidental way was this matter mentioned, as I have already referred to in my testimony. I have covered practically everything that I recall.

Q. How many times while you were there did Judge Arnold dictate or redictate the stipulation?—A. Well, he would not dictate or redictate the entire stipulation. He would dictate a clause, and some one would interject something; then they would strike out a clause, and then they would redictate that one particular clause and then go to another clause, and the same thing would happen over again.

Q. Do you remember myself or either of my counsel objecting to the stipulation?—A. Well, as I stated before, Mr. Barrett was insisting——

Q. I mean in its final form, Mr. Schneider.—A. No.

Q. Did you hear any objection from Mr. Cornelius Bauer or Mr. Bogy to the stipulation in its final form, as it was when you left there?—A. No.

Q. So that when you left there seemed to be a general satisfactory understanding and agreement upon the part of the board, upon the part of contestant, and upon the part of the contestee as to the stipulation?—A. Yes.

Q. But you know nothing about the form or instructions or the manner of the recount?—A. Nothing further than what I have testified to already.

Q. You were not present when they were dictated, were you, or prepared? I mean now the instructions or the form for the recount.—A. Nothing further than this stipulation.

Mr. Barrett. Mr. Schneider, do you recall Mr. Bogy and his counsel, Cornelius F. Bauer, being asked by the board through its chairman as to whether they wanted a record kept of scratched ballots, or if they wanted just a record of the total ballots; and Bogy and his counsel objected, replying, no, they didn't want to keep a record of the scratched ballots, only of the total ballots? Do you recall such a question and such an answer given by them?

A. I distinctly remember, Mr. Barrett, that several times Judge Arnold, and maybe once or twice somebody else, would pick up this book, and they would say, "We will keep a record of the straight Republican ballots or straight Democratic ballots or scratched Republican ballots and scratched Democratic ballots, and the same as to the others."

Q. That is your recollection as to what happened, and that is what is the agreement; is that it?—A. Yes, sir.

Q. Now, then, as I say, you have no recollection of the question I propounded being asked or being answered in the manner in which I have indicated?—A. Repeat the question, please.

Q. I will propound it to you: Have you any recollection of a question like this being asked by Judge Arnold for the board to Mr. Bogy and his counsel: "Mr. Bogy, do you desire a record of the scratched ballots as well as the straight ballots?" They replied, "No; all they wanted was the total number of ballots; did not desire a record of the scratched ballots"?—A. No; all that Mr. Bogy stated, while I was there, was to the contrary; was that the record was to be kept, as I recall it.

Q. Now, this form I hand you there, which was used in the recount, and is for this record, do you find any column there providing for "scratched ballots"?

Mr. Feigenbaum. I submit that the record speaks for itself. I don't think it matters much whether he says there is a particular column; that is in the record and speaks for itself.

Mr. Barrett. Three columns there: "Total ballots," "Rejected ballots," and "Disputed ballots." Do you find any place in that form for "scratched ballots"?

A. No; this is not in the form I heard discussed there.

Q. Then, if this was agreed upon, it is not in the discussion you heard?—A. That form was not discussed while I was there. Judge Arnold mentioned several times how they were going to keep a memorandum of it.

Q. Then, you were not present when that form was agreed to?—A. No.

Q. You were not present when these instructions that Mr. Hawes showed you were agreed to?—A. I was not present when any such discussions as that were dictated.

Q. You were only present up to the time that they had agreed upon the form of stipulation, and were not present when it was signed?—A. No; I was not there when it was signed.

Q. What transpired after that time you know nothing about?—A. Naturally I couldn't testify to anything that happened when I wasn't there.

Mr. Hawes. Just one more question, Mr. Schneider; do you know whether that stipulation was changed after you left there?

A. No. Apparently everybody was in accord at the time I left there.

Q. But you don't know whether, as a matter of fact, when it was reduced to writing after you left it was changed or not?—A. No. I don't see anything in it as it now appears as strikes me as being in conflict with what was in substance agreed upon.

Q. But you wouldn't say?—A. Oh, no; because I can't state it; I couldn't undertake to say I remember verbatim just the way Judge Arnold dictated it. I am not anything of a memory prodigy.

Q. You would not undertake to say that it was actually reduced to writing and brought back and read after reduced to writing and then changed, would you?—A. Why, no; I would not undertake to say that.

Q. Is there anything in that stipulation regarding the counting and tabulating of scratched ballots?

Mr. Feigenbaum. I object to that question because the stipulation has already been introduced by contestee and speaks for itself. The construction is not upon us. The question of construction of this stipulation is not for us or for any witness.

A. It does not go into the detail that your further rules go into there; no.

Mr. Hawes. No; that stipulation, if a recount had proceeded into eight and one-half wards, without any objection being made to the manner of the recount, and the conduct of it previous, and then an objection was made in the eighth ward, all nine wards were to consider that was an acquiescence up to that point?

Mr. Feigenbaum. I object to that. That is clearly an attempt to get an opinion on something which is not even in the record; and, furthermore, that question will be for Congress to determine as to whether or not the proceedings in the election office were proper or improper in view of the understanding of the parties in their several agreements.

A. Well, I would not undertake to qualify as an expert along that line. If opinion evidence is what you want. I am not an expert along that line, because this is the first time I ever came in contact with it.

Mr. Hawes. Well, you do know when a usual and regular form is used, and a stipulation is reduced to writing, that the parties signing the stipulation are bound by the stipulation?

Mr. Feigenbaum. I object to that, because it is improper to ask of any witness as to how binding any agreement is or what must be done under that.

A. I would take it that is the purpose for which you entered into the stipulation, that you expected to be bound by it. That is my understanding of the usual purpose of a stipulation.

Mr. Feigenbaum. Mr. Schneider, in referring to the right of contestant to take photographs of any ballots where there was a similarity of handwriting appeared, or any disputed ballots, did you mean any ballots that contestant might dispute?

A. So I understood from what was said.

Mr. Hawes. When you refer to the photographing of ballots in dispute, I assume you mean that are disputed while the boxes are open and the recounting is being made?

A. Read the question.

(Last question read.)

Q. The ballots are on the table.—A. Well, as I understand it, a dispute over the ballots which were put in the ballot boxes at the time of the election which were being counted during this contest.

Q. And were picked out while the recount was going on and a request made for their photograph.—A. Well, those would be the same ballots, I take it, that were cast at the time of the election; those were the ones to be photographed, if any were to be photographed.

Q. Yes.—A. So I understood it.

Q. I believe you and I do not understand each other yet. To make this clear, Mr. Schneider: All of the ballots were examined, recounted, and tabulated in the presence of two Republican judges and clerks and two Democratic judges and clerks and the watchers for Mr. Bogy and myself.—A. Yes.

Q. If a ballot appeared while this recount was taking place calling for a photograph, and the request was made for the photograph, then it was your understanding it should be done?—A. Well, no. As I understood, if there was any dispute arose between these counters which they could not unanimously settle among themselves, they were to refer to the board, and then Mr. Bogy was to have the right, if he insisted upon it, to photograph any of these disputed ballots that were passed up to the board, or where there was any dispute arose among the counters.

Mr. Feigenbaum. Now, in the event that a ballot was not held out by the judges and clerks and Mr. Bogy desired to photograph that ballot later, was it your understanding that he was to be precluded from doing so because the judges and clerks did not submit that particular ballot to the board or say nothing was said on that?

Mr. Barrett. I am going to object to this witness giving his opinion as to how things were being conducted.

Mr. Hawes. I don't object to it.

A. I do not see that I can say anything further than what I have said; that he was to have the right to photograph the disputed ballots; that there was to be a record kept of all scratched ballots and the straight ballots, and if there was any similarity in the handwriting upon the scratched ballots, why, he was to have the right to photograph those ballots.

Mr. Hawes. When they were in dispute?

A. I take it that he had the right to. as he said that he wanted to photograph any of those scratched ballots that he saw fit; that he was not satisfied with the ballot; if there was anything that he saw that struck him as being a similarity in the scratch upon these ballots. why, he was going to insist upon his rights to photograph it.

Q. Still you do not understand me, Mr. Schneider. I will try to illustrate. In this contest there is the second, third, fourth ward, the eighteenth ward, the nineteenth ward, the twentieth ward, the twenty-second ward, the twenty-sixth ward, the twenty-seventh ward. Was it your understanding of this agreement that after a recount had been made in the manner you have described, in the presence of these watchers, and the recount had proceeded to the twenty-sixth ward, that then Mr. Bogy, after the boxes had been closed, could ask for a blanket order to photograph everything or anything?—A. Well, the matter was not discussed in that way or in that detail. As I understood it, Mr. Bogy was to have the right to photograph whatever appeared to him as being likely to aid him in showing any fraud in regard to the ballots. They did not go into that detail that you just now mentioned in your question.

Q. You know there has been some 3,000 scratched ballots, maybe more; the recount lasted for five days, or longer; and the ballots about which disputes were made were placed on the commissioners' table, and then the ballots were sealed in the original boxes in which they came. No request had been made by either the Republican clerks or the watchers for Mr. Bogy until we arrived at the twenty-sixth ward; then he wants, for illustration, the photographs of all scratched ballots, although they were not in dispute at any time; is that your understanding that he could do that?

Mr. Feigenbaum. If that matter was discussed; otherwise I object to an understanding of something that was not discussed at all at the time.

A. It was not discussed in that detail; but, as I understood it, Mr. Hawes, Mr. Bogy was insisting on photographing whatever appeared to him as showing any fraud in the matter of the ballots.

Q. That he pointed out during the examination of the ballots, or one of his watchers?—A. I don't think that was said; no.

Not being able to complete the taking of said depositions, by consent and agreement of counsel for the respective parties hereto, I adjourn the further taking of said depositions until the 27th day of January, 1921, then to be continued at the same place and between the same hours.

Frank B. Grodzki,
Notary Public.

At 11 o'clock a. m. Thursday, January 27, 1921, the further taking of these deposition was resumed, pursuant to the adjournment above noted, at room 316 Chemical Building, St. Louis, Mo., and the following proceedings were had, to wit:

Appearances: Mr. J. M. Feigenbaum, for the contestant; Mr. Campbell Cummings, for the contestee.

HENRY F. SALLER, a witness called by the contestant to the witness chair.

Maj. Hawes. Before this witness is sworn or examined I want the record to show that I have received the following communication, delivered to me, and one apparently delivered to Mr. Bogy at the same time this morning from a deputy election commissioner. I ask that that be inserted in the record. The letter reads as follows:

State of Missouri,
Board of Election Commissioners
for the City of St. Louis,
City Hall, January 27, 1921.

To Mr. Harry B. Hawes or his counsel of record.

Dear Sir: I am going to make a request of you, which request I am also making of Mr. Bogy and his counsel.

I understand there is an effort made on the part of counsel for contestant to introduce, by evidence of certain witnesses. that I made certain announcements and certain instructions during the recount of the ballots in the Hawes-Bogy contest.

I respectfully ask, in fairness to myself, that I be permitted to take the stand, under oath, to bear testimony to the announcements and instructions which I myself made.

Yours, truly,

VINCENT DEMPSEY.

Now, I would like to ask counsel for contestant if he will give Commissioner Dempsey, who he subpœnaed as a witness, an opportunity to state what instructions, if any, he gave to the watchers, speaking for the board, during the temporary absence of the board.

Mr. FEIGENBAUM. I will say on behalf of contestant that Commissioner Dempsey, like any other witness, can be called to testify by contestee, if he so desires, as readily as we could. It will be in his power to call him as a witness if he believes his testimony of any value in this contest, and that if we find time to take Commissioner Dempsey's deposition we may call him. However, at this time we first want to complete the testimony of many other more important witnesses.

HENRY F. SALLER, a witness of lawful age, being produced, sworn, and examined on the part of the contestant, deposeth and saith:

Direct examination by Mr. FEIGENBAUM:

Maj. HAWES. Before proceeding with this examination I would like to ask counsel if contestant did not receive a similar letter to the one inserted in the record, from Mr. Dempsey.

Mr. FEIGENBAUM. I don't know. For the contestant I want to say it is improper to ask the attorney for contestant any questions for the record until he is under oath, and counsel for contestee will have ample opportunity to put him under oath and ask him any questions.

Maj. HAWES. Will contestant's counsel deny the fact that there was delivered in this room within the last 10 minutes the communication addressed to contestant containing a request from Commissioner Dempsey for permission to testify as to the instructions given by him on behalf of the four members of the board?

Mr. FEIGENBAUM. I say now, as one of the attorneys for contestant, that such letter was not delivered in my presence. However, I won't undertake to deny that any such letter was given or delivered to contestant outside of my presence.

Maj. HAWES. The contestant is sitting beside you. You can secure the information from him by asking him the question whether he received such a communication or not.

Mr. FEIGENBAUM. That question is immaterial, and I do not see fit to ask my client that question.

Maj. HAWES. Contestant's counsel refuses to either admit or deny receipt of a communication received in the presence of the notary, the stenographer, and others.

Mr. BOGY. I would like to mention this fact: The contestee is seated in this room, and I would like to ask him if during the progress of the recount at the City Hall whether he did not frequently take dinner with Commissioner Dempsey, and did not Commissioner Dempsey dine with him at the Planters Hotel, or lunch with him, if we want to go into all these statements. Further than that I want to state——

Maj. HAWES. One minute, Mr. Commissioner; is my cross-examination being resumed at this time?

Mr. FEIGENBAUM. No.

The NOTARY. No.

Maj. HAWES. These are questions directed toward me, having nothing to do with the matter relating to the board of election commissioners, and are entirely outside of the record, and I ask that I be put upon the stand and interrogated as a witness. That is the only proper way to interrogate me.

Mr. BOGY. I wish to state that it is my desire, as my time is very limited, and the greater portion of the time that I had to make a case has been taken up by long orations, as the record will show, by the contestee, that I am very desirous of taking the testimony of the witnesses who are waiting to give their testimony, and I ask in all fairness, as I only have a very short while to get in my testimony, that I be allowed to proceed with the examination of my witnesses without being continually put off by the interjections of the contestee with the evident view of my getting in testimony that is very material to this case, and I ask that the notary allow us to proceed with the testimony. The witness is in the chair waiting to give it. That is all I ask.

The NOTARY. Mr. Bogy, if you desire Maj. Hawes to be sworn so as to ask any questions——

Mr. FEIGENBAUM. No.

The NOTARY. I will do so.

Mr. FEIGENBAUM. Not at this time. We have not asked for it.

The NOTARY. Then proceed with the witness.

Mr. FEIGENBAUM. Please state your name in full.

A. Henry F. Saller.

Q. What is your occupation, Mr. Saller?—A. My occupation is laboratorist for Dr. R. T. Gerak, doctor of dental surgery.

Q. Where do you reside?—A. I live 2811 South Jefferson.

Q. Mr. Saller, were you employed as a watcher for contestant in the Bogy-Hawes contest and during the recount completed a week ago last Monday in the office of the election commissioners of the city of St. Louis?—A. I was; yes.

Q. Will you tell us at what table you were so engaged as a watcher, if you know the number of that table?—A. I think the table was No. 1.

Q. And were you in the room of the election commissioners' office from the time the recount commenced on Wednesday, January 12?—A. I was; yes, sir.

Q. And were you there during the progress of the recount from that time until the completion of the recount on the 17th of this month, being on Monday?—A. I was; yes, sir.

Q. Did you hear instructions read by the chairman or any member of the board of election commissioners on the 12th, when the recount commenced?—A. Yes, sir; I did.

Q. Were those instructions first read from a printed form, the first instructions given?—A. I don't know whether they were printed or not, but Mr. Glendy Arnold got up on the floor and he held the floor, and he give a speech first about how we were to do our affairs. He had ordered that they count the ballots first, you know, as they come out of the ballot box, and then go to work and count the poll books, of course, and then afterwards they made another little statement there that they wasn't going to do that.

Q. Who made that statement?—A. Mr. Glendy Arnold made the second statement.

Q. What was the second statement?—A. The second statement then was that they were not to count the ballots as they got them out of the ballot box, just call the ring numbers, and then check the ring numbers back with the poll books, and they would have to balance, which they had to do.

Q. Was that the same morning?—A. No; that was the next day, the next day following that Wednesday.

Q. Now, were several talks made by Judge Arnold?—A. Well, there was a few talks that were made by Glendy Arnold.

Q. Were any further instructions given you by any members of the board?—A. Not that I can remember of from Glendy Arnold.

Q. I say from any other member of the board?—A. Well, there was by Mr. Hawes—not Hawes——

Q. Dempsey?—A. Dempsey. He made one in the evening there one time, and then another one during the day.

Q. What evening was that that he made his first talk concerning your instructions?—A. The first one, I don't know whether you could call it instructions or not, but he says if the watchers are not barred from keeping their hands out of the ballots or looking at them or examining them they would be excluded from the room; that was made in the evening.

Q. Evening of what day, bearing in mind that the recount started on Wednesday, the 12th?—A. That was on the 13th day of January; it was the day following the Wednesday of the day we started the recount he made that open statement in the evening.

Q. About what time was that?—A. Well, around 8 o'clock, quarter of 8, something around that time; he first made that statement right open, right in the room. He says the watchers were not here to discuss the affairs of the judges and clerks; they were just here to look on, and that was all, and he says if they did not keep their hands out of the ballots and examining the ballots, etc., they were to be excluded from the room.

Q. If they examined the ballots that they would be excluded from the room?—A. Absolutely; yes, sir; if they examined them or got their hands on the ballots, they were to be excluded from the room.

Q. Now, what else was said the next day, or what else was said that afternoon when you say he made another announcement?—A. No; it was not made that afternoon; it was made the following afternoon.

Q. The following morning or afternoon, whenever that was done?—A. The following afternoon there was a statement made by him; he says we were not allowed to take numbers of scratched ballots from either party, whether Democrats or whether Republicans, whether for Mr. Hawes, or whether they were for Mr. Bogy; said we were not allowed to take these numbers of those ballots.

Q. Of scratched ballots?—A. Of scratched ballots. He says we were not allowed to mingle with any of these numbers.

Q. Do you know what brought on that statement?—A. I don't; no. I just took the instructions from what they said; I followed their instructions as they stated in the room, because it was no more than fair as they were the superior officers of the affair, and I went according by what their instructions were.

Q. You understood this recount was being conducted under the supervision of the election commissioners?—A. Yes, sir; and we gave them a fair and square deal on both ends.

Q. You were to give them a square deal; what do you mean by that?—A. Not favor either one of them. If it was for Bogy, we gave it to Bogy, and if it was for Hawes, we gave it to Hawes.

Q. Before these announcements that were made by Mr. Dempsey, had you kept any track or attempted to keep any track of the numbers of any scratched ballots?—A. I did, yes; because——

Q. What ballots were those?—A. Because it is the regular watcher's position, I should imagine, because if there is anything there that looks anything wrong, it should be the watcher's place to take them down.

Q. What do you mean by anything wrong in particular?—A. Well, in particular I would say this: If the ballot looked to me it was in different handwriting I would take the number of that ballot.

Q. What do you refer to as different handwriting?—A. What I would refer to is this: Supposing I had a ballot, for instance; here Mr. Hawes's name is in there in ink, you see; you know it is printed. Well, now, his name is struck through there and Mr. Bogy's name written in. And, say, down below there is another name there; now, that handwriting does not correspond to the one where Bogy is wrote in; and in several places I can state that I have seen, instead of trying to imitate the handwriting, they would print the name in. That would show that was a fraud right there, I should imagine.

Q. What names were printed in then? Was it Bogy or Hawes?—A. Well, in some cases it would be Bogy.

Q. Bogy's name printed in?—A. Sure; Bogy's name printed in, or Hawes's name printed in, or whatever way it looked. And in this statement here, that I know positively if you will give me a chance to look at it, I can tell you exactly, because I took a good look at that one [referring to paper]. In ward 26, precinct 17, there were 33 scratched ballots, and I will vouch to say that over three-fourths of them were not correctly voted.

Q. Were those Republican scratched ballots?—A. Those were Republican scratched ballots.

Q. What do you mean by not correctly voted? Explain why they were not correctly voted, in your opinion.—A. That is, the handwriting does not correspond with the regular voter.

Q. You mean that the handwriting in the scratch where Mr. Hawes's name was inserted does not correspond with the rest of the writing on the ballot?—A. Correct, sir.

Q. Where other scratches were made?—A. Yes, sir. Lots of times they were printed instead of written in. They tried to go to work and imitate the handwriting as closely as possible, and they would print them in in some cases.

Q. A minute ago you referred to a general statement as to what might be an improper ballot there where Mr. Hawes's name was printed in, or Mr. Bogy's name was written in?—A. I just said that for illustration.

Q. Did you see any such names of Mr. Bogy printed in?—A. That is what I am telling you; that is what I have seen.

Q. That is Mr. Hawes's name printed in you refer to?—A. Yes; Mr. Hawes's name printed in is what I refer to.

Q. Now, I am asking if you saw any such ballots where Mr. Bogy's name was written in in a wrongful manner?—A. No; I have not.

Q. You did not see any?—A. No.

Q. Did you see any ballots where large groups of Republican scratched ballots had the name Harry Hawes, either written in or printed in in the same handwriting of different ballots?—A. Well, there were a lot of ballots, you know—we went through a lot of ballots—but I could not exactly tell how many were written that way, because we were not allowed to take, you know, the numbers, or the affair of those ballots, see? I can not state how many there was.

Q. Well, did you run across any group where such names were in the same handwriting on different ballots?—A. Oh, yes; yes.

Q. Do you know anything about handwriting yourself?—A. Well, no; I am not an expert, but you can believe me, gentlemen, if you ever was to look at them again you could tell that yourself.

Q. Tell what yourself?—A. So very easy to distinguish the writing from the regular voter.

Q. It is very apparent to you?—A. Very apparent; yes, sir.

Q. That the handwriting of the scratching of Bogy and the insertion of Hawes's name was entirely different from the handwriting where other candidates were scratched on the same ballot?—A. Absolutely.

Q. Now, when Commissioner Dempsey made this statement, you referred to a few minutes ago in the afternoon or the morning of Friday, whichever it was—it has been referred to both as having been made by some witnesses in the afternoon, and some as having been made in the morning of that day——

Maj. Hawes. I object to the leading question of counsel.

Mr. Feigenbaum. Well, whenever that statement was made was that followed by any statement by Mr. Bogy, do you recall? Do you recall Mr. Bogy's statement, if any, after Mr. Dempsey's statement?

A. What is your question now?

Q. After this statement that was made on Friday by Commissioner Dempsey, was that followed by any statement of Mr. Bogy's?—A. Yes. Mr. Bogy said right after Dempsey made that talk on these ballots and one thing or another. Mr. Bogy says, he says, "Gentlemen," he says, "I want to make a statement." And he made a statement to this—as close as I can tell it—I may get a few words in there wrong, but if I do I hope to be excused, because I want to be called on right away—he says that inasmuch as if he was going to get a square deal here that Congress would take it up and take these scratched ballots and have them photographed. He says, "If I can't get a square deal here I will get it off Congress."

Q. What was said by Mr. Dempsey just before he made that statement?—A. That is what I told you about.

Q. What was it?—A. About us not being allowed to take numbers of any scratched ballots, and not allowed to get our hands on them, that we were only there to watch, that was all, and we were not allowed to mingle with the ballots at all; that is, not take any numbers from any of the scratched ballots in particular. We were there just to watch.

Q. Were you permitted to take numbers of any ballots where the scratching and the insertion of Mr. Hawes's name appeared to be in a handwriting different from that of other names? Could you take the numbers of those ballots?—A. I should say not.

Q. You couldn't?—A. They wouldn't allow us to take nothing. The only thing we were permitted was to take the count of the ballots; say there was 15, we took 15.

Q. You could see there was 15, but you could not take the numbers of them?—A. No individual numbers. You were allowed to take the gross amount of them; you could say 15 scratched Democratic ballots, or 15 Republican scratched ballots, and so forth; that is all; but we were not allowed to take any individual number of any ballot, whether it was a Democratic ballot or a Republican ballot.

Q. Now, Mr. Saller, what did you understand by "disputed ballots"?—A. What do I understand by "disputed ballots"?

Q. By disputed ballots?—A. By disputed ballots?

Q. As that term was used in the election office during this recount?—A. What I would term as a disputed ballot would be where the Republican clerk and the Democratic clerk could not get together on it.

Q. That was what was known in the election office as a disputed ballot?—A. As a disputed ballot; yes.

Q. Did you as a watcher have a right to call any ballot disputed where the clerks and judges agreed?—A. I should say not.

Q. Could you have any ballot that was not disputed by the judges and clerks of the election commissioners' office, and appointed by them, brought before the election board?—A. No, sir; no, sir. The only chance we had if we could catch it soon enough to either catch Mr. Bogy or his attorney, Mr. Bauer, and then sometimes they would argue these things out.

Q. Argue with who?—A. With the judges and clerks.

Q. And then if the judges still agreed that the ballot was not disputed, even though Mr. Bogy or his attorney would argue that, would that be returned into the ballot box?—A. Oh, no; no; that would be put in the envelope.

Q. In which event?—A. In the disputed event, in the envelope like that——

Q. In the envelope——

Maj. Hawes. Wait a minute. I object. Let him finish his testimony.

A. It would be taken and put in the envelope, a disputed ballot, and the board would discuss that.

Mr. Feigenbaum. Disputed ballots?

A. Yes; because they could not do it out there; they would not give them the time to accomplish that. They would report it to the board, and the board would decide the disputed nature of the ballot.

Q. Now, with reference to disputed ballots——A. Yes, sir.

Q. You have described a few minutes ago what a disputed ballot was, a ballot where the judges did not agree?—A. Yes, sir; that is it.

Q. Now, I ask you if in the event the judges did agree and said the ballot was not disputed, and if Mr. Bogy thought that that ballot should be placed before the election board, what would become of that ballot, the judges agreeing that it was not a disputed ballot?—A. Well, it was up to the judges.

Q. Up to the judges?—A. Yes; if the both judges favored on it, why, it was not left to the board then; it was left just to the judges.

Q. Regardless of what protest Mr. Bogy might make?—A. Positively left to the judges.

The Notary. By judges, you mean the deputy clerks?

A. I mean the Republican judge at the table and the Democratic judge, you know the ones——

Q. Those were the clerks of the election commissioners?—A. Yes; appointed by the board of election commissioners.

Q. They were called clerks?—A. Clerks or judges, whatever they were. I forgot what you term them here, but they called themselves judges, and the other two were clerks at the table; that is the way I understood it.

Mr. Feigenbaum. Mr. Saller, just one question; in this statement that Mr. Bogy made was anything said by him regarding his desire to take notes of disputed ballots; or, rather, scratched ballots, I mean to say?

A. As I stated, Mr. Dempsey had made that statement, that we were not allowed, and Mr. Bogy says, " If I don't get it here, I will get it in Congress."

Q. Get what here?—A. Get the scratched ballots, the numbers of them. They wanted them counted and they wanted to know what scratched ballot it was. Now, what their idea was there I don't know; but that is the way it was told on the floor.

Q. I mean did Mr. Bogy say why he wanted the scratched ballots either kept separate or the numbers noted?—A. No; he did not. He did not, not that I know of.

Q. You do not recall him saying that?—A. He did not say for what purpose he wanted them, or anything like that; just said he wanted them. He said he was the contestant in this case, and he said he wanted them, and if he could not get a square deal here, he says, Congress would get the numbers of the ballots or take them by photograph.

Q. Did he say he did not get a square deal?—A. I don't know whether he did or not.

Q. He said if he could not get a square deal here?—A. I could not make that statement, whether he got a square deal or not, because he never asked me that, and I never asked him that.

Q. In your opinion, do you think a square deal was accorded the contestant?

Maj. Hawes. I object. Counsel continually leads the witness and asks for conclusions.

Mr. Feigenbaum. I grant it is a conclusion, but I am asking for the same conclusion that was asked at least half a dozen times by contestee in cross-examination of other witnesses, and he being one of the officials or individuals present at the recount, he is as well able to give his opinion on such a matter as any witness heretofore produced.

Maj. HAWES. He is only one of 58 deputy election commissioners who were present, and none of whom has been summoned to testify, only watchers employed by Mr. Bogy.

The NOTARY. Proceed, gentlemen.

The WITNESS. What was the question?

Mr. FEIGENBAUM. Will you read the question again, please?

(Last question read as follows:)

"In your opinion, do you think a square deal was accorded the contestant?"

Mr. FEIGENBAUM. In the recount?

A. Well, according to our table——

Maj. HAWES. I object to that form of question. If you want to ask him the question if he thinks the two Republican and the two Democratic counters did anything crooked or improper, it would be a proper question to ask him what took place at the table at which he was a watcher, but any other question relating to what took place at that table or instructions given by the commissioner is not a proper question to ask this witness.

Mr. FEIGENBAUM. Our very objection to the recount has been—and we have made that position plain throughout—that contestant was not accorded the same privileges as contestee was in preserving what would be a sufficient record to present before Congress.

Maj. HAWES. Now, you are testifying——

Mr. FEIGENBAUM. I am not testifying. I am giving you the reason for my question, and my reason for asking this witness that question was not to determine whether fraud was committed by the particular judges or clerks at any table, but whether or not the election board, or any individual member of that board, did not prevent contestant from obtaining sufficient information needed by him to present to Congress in this contest; but since objection is made by contestee to this question, I will withdraw it. That is all.

Maj. HAWES. I object to the statement just made by counsel, which is mere introductory evidence, is not borne out by the facts in the case, no such state of facts as stated exist or was shown either by the written or verbal instructions of the election commissioners.

Mr. FEIGENBAUM. The record will speak for itself as our reply.

The NOTARY. Is that all?

Mr. FEIGENBAUM. That is all.

Cross-examination by Maj. HAWES:

Q. Mr. Saller, what is your politics, please?—A. Politics—well, I am a Republican.

Q. What is your business?—A. I am a laboratorist.

Q. Are you employed at the present time?—A. At the present, yes, sir; with Dr. R. T. Gerak.

Q. Were you employed at the time Mr. Bogy took you away from your present employment?—A. I was; yes, sir.

Q. You served temporarily to help him?—A. Yes, sir. We were not very busy, and Mr. Bogy asked me if I would not undertake that for him, and I told him I would.

Q. What is your compensation as a clerk with the doctor?—A. Laboratorist.

Q. Laboratorist?—A. Yes; I do all of his crownwork.

Q. I mean, how much do you earn a month or a day? What is your income?—A. Well, our income is about forty or forty-five dollars a week.

Q. Yours is about $45 a week?—A. About $45 a week. You see, it all depends on the work. You see, some work you get paid higher and some we do not. It depends on how it comes in; but it will average around $45 a week.

Q. Mr. Saller, you remember the morning of the recount that Judge Arnold read to you certain instructions for the guidance of the deputy election commissioners' watchers?—A. Yes, sir.

Q. Do you remember this statement? [Reading:]

"If there is any doubt as to whether any ballot has been properly marked, the clerk shall place said ballot in the envelope for the decision of the Board of Election Commissioners. Also place in the envelope all ballots that have no corresponding number on the poll books and all that have duplicate or triplicate numbers, also all other disputed ballots."

A. Well, they did that for the first day, Mr. Hawes.

Q. Wait a minute. We will not get in trouble; I will take you over the rest of the time. I am not trying to confuse you at all. You remember that, do you?—A. I do, so far.

Q. Now, later that day or the next day, Chairman Arnold made another statement?—A. Yes, sir.

Q. At the time that he made this second statement you saw Commissioner Buder, Lammert, and Dempsey in the room, did you not?—A. Yes.

Q. They were all there?—A. I don't know as they were all there. I did not know Lammert until the last day.

Q. But you saw Commissioners Dempsey and Buder whom you recognized?—A. I knew Buder and Dempsey and Glendy Arnold. I knew Glendy Arnold before ever he got in the office there. I seen him in the office; I knew him as he was a judge on the bench.

Q. The second statement made by Arnold was to this effect: Where the clerks find duplicate or triplicate numbers and where the total of ballots and the ballots agree, that then the vote should be given to the contestant or to the contestee whose name was on it?—A. If they found the same amount of ballots, you mean?

Q. I mean the first order was to put all duplicates and triplicates in the disputed ballot envelope?—Yes, sir.

Q. And then by agreement in order to save time, he made the verbal statement to count them for Mr. Bogy or Mr. Hawes where there is no irregularity on the books; was that his second statement?—A. That is correct.

Q. That is correct, is it?—A. Positively.

Q. Did Mr. Arnold make any other statements during the entire recount?—A. Not that I know of.

Q. You don't recollect of his making any other statements?—A. No.

Q. And it is your recollection that Mr. Dempsey made two statements?—A. Dempsey did make two.

Q. Two different statements?—A. Yes.

Q. Are you familiar with the first understanding, which was that watchers were not permitted to handle ballots?—A. That is correct; that was his first statement.

Q. And that that was to be done by two Republican clerks and two Democratic clerks?—A. Correct, Mr. Hawes.

Q. And that Mr. Dempsey's attention was called to the fact that one of the watchers had been helping in the recount and that thereupon in his first statement said——A. That was his first statement.

Q. I am not leading you.—A. That was that night.

Q. In his first statement he said, "The ballots are only to be handled by the official representatives of this office, the two Democrats and two Republicans, and watchers must not assist in the recount or handle ballots."—A. Correct.

Q. That was his first statement?—A. And he says if so they will have to be excluded from the room; that is correct; that is Mr. Dempsey's first statement.

Q. Now, the second statement, one of Mr. Bogy's watchers, Mr. Hartmann, was taking numbers of any ballots that he saw fit, and complaint was made, and then Mr. Dempsey in his second statement instructed judges and clerks and watchers not to keep a record of the number of any ballot except those ballots that were in dispute?—A. That is correct?

Q. That was his second statement. Did you hear him make any other statements?—A. No; that is all I heard him say, that we were not allowed to take any individual ballot number; that we were only there to watch.

Q. Excepting when in dispute?—A. Only in dispute. That was from the very first day on all disputed ballots which judges and clerks could not get together on they had to be put in the envelopes and left for the board to decide.

Q. And then the numbers of those ballots were put down?—A. Yes, sir. They put them on a white sheet like that [indicating] and turned them in; always put the numbers on here in the corner of the ballot; that was the only ballot we were allowed to take the number of.

Q. Those that were disputed?—A. Yes, sir.

Q. Now, you just testified, Mr. Saller, that you saw a number of ballots in which the handwriting seemed to be similar. It takes some time to compare handwriting, one with the other, so that you must have had an opportunity to examine those ballots, or did you not have an opportunity; otherwise how could you say that the handwriting was similar?—A. Well, I did not examine the ballots, you know, with my hands or anything.

Q. But with your eyes?—A. With my eyes. I just noticed, because they were counting them very slow at our table; they were giving a good count; you got a square deal as far as the count was concerned at our table. I will vouch to say that Mr. Meyer and Mr. Lubeck and Mr. Powers and Mr. Calligan. I think his name is, a little Irish fellow there, Cullinane, that is his name; you got a mighty square count outside of this one particular ward, this ward 26, precinct 17; there is where I noted the handwriting. That is the only statement I can make on that table.

Q. We will come to that in a minute. You stated there was a similarity of handwriting?—A. Yes; it was very changeable, according the way the voter wrote it.

Q. Now, Mr. Saller, we will get along all right.—A. Sure we will.

Q. I simply want you to state if you saw a similarity of handwriting in a number of instances you must have had an opportunity to have watched the handwriting and compared it?—A. Just as I stated, Mr. Hawes. I fully complied with the board of election commissioners' demands. I never fooled with any ballots; I never examined them with my hands, nor did I take any recount of them. I just done as I was told. I was allowed to watch, and then I took my own bearings on my own slip of paper, and I handed it to Mr. Bogy, and that is how I noticed them signatures were different.

Q. And at the end of each evening's recount did you hand a memorandum of the results of the count of each box to Mr. Bogy or Mr. Cornelius Bauer?—A. I did; yes, sir.

Q. Do you remember what ward you were counting when Mr. Dempsey made the announcement, his second announcement, regarding the keeping of numbers of ballots that were not in dispute? We are trying to locate the time of day and the day this second announcemet was made.—A. No; I can not give you the definite ballot box.

Q. Do you know what ballot box you were counting?—A. No; I don't know the exact——

Q. Do you know in what ward or precinct it was? Was it the twenty-sixth ward?—A. Darned if I know. I didn't take any record of it, because I did not think it was worth while.

Q. Will it help your memory——A. I don't believe I could fool with that question, because if I don't know I ain't going to swear to it.

Q. Will it help your memory if your attention is called to this similarity of handwriting that you spoke of? In the twenty-sixth ward you said that occurred, didn't you?—A. Just a minute. I will look it up. [Referring to paper.] Yes; ward 26, precinct 17.

Q. Ward 26, precinct 17?—A. Ward 26, precinct 17.

Q. Was it at that time that Mr. Bogy said that if he was not treated right he would take this matter to Congress, or words to that effect?—A. No, sir.

Q. It was not at that time?—A. It was not at that time.

Q. Was it after that time or before that time?—A. It was before that time.

Q. It was before that time?—A. Muchly before.

Q. During the same day or the day before?—A. It was about a day and a half before, something like that.

Q. About a day and a half before?—A. Yes; about a day and a half, or so.lec-

Q. Did you see anything wrong in the conduct of the two Republican e gention officials at the table at which you watched?—A. No, sir; they we tlemen on both sides; I will say that. A. As far

Q. You think they did their duty honestly and conscientiously?—ir utmost as I can state, yes, sir. They were gentlemen; they tried to do th best. blican.

Q. Both sides did?—A. Both sides did—the Democrat and Repe made this

Q. Now, wasn't it your understanding that the count should count the balway: Two Republican clerks and two Democratic clerks would missioners any lots, examine the ballots, and put into an envelope for the com ballot that was in dispute?—A. Correct. r. Bogy or Mr.

Q. And when any occasion arose for a dispute, where M—A. You mean Bauer or Mr. Barrett or anybody else, anything about a ballot argue? in the disputed

Q. Argue about it, and it could not be settled it was put agree on it; if envelope?—A. Absolutely; that is, if the two judges did nree on it, it was the Republican judge and the Democratic judge did not a put in the envelope.

Q. You heard discussions by Mr. Bogy and by Mr. Bauer and Mr. Barrett and Mr. Cummings frequently, didn't you, around your table?—A. Every now and then they would get in some spat around some table, and would kick heels together and would put on boxing gloves.

Q. Then the decision of the dispute was left to the four clerks?—A. Yes, sir.

Q. And when they could not agree it was put in the disputed envelope?—A. Correct.

Q. The order of your instructions was this: First, the written instruction by Mr. Arnold?—A. Yes.

Q. Second, the verbal change by Mr. Arnold with the board present?—A. Correct.

Q. Third, the statement of Mr. Dempsey?—A. Correct.

Q. And, fourth, the statement of Mr. Dempsey?—A. Correct.

Q. And those were the only instructions given to the judges and clerks and watchers that you heard, were they?—A. That is, that I can remember of or have any recollection of as to the question that was brought to my mind at the present time.

Q. You saw Mr. Bogy and Mr. Cornelius Bauer moving around the room, didn't you?—A. Yes, sir.

Q. And stopping at the tables?—A. Yes.

Q. And looking at ballots?—A. Yes. I seen Mr. Barrett there and several more.

Q. Mr. Barrett and Mr. Cummings?—A. And this gentleman right here [indicating].

Q. Mr. Cummings and Mr. Hawes?—A. Yes, sir.

Q. We were all moving around the tables and watching the recount?—A. That is correct.

Q. Did you discuss this matter with Mr. Bogy in the hall before you came into the room?—A. No; I did not.

Q. Didn't have any conversation with Mr. Bogy?—A. No; I did not, Mr. Hawes.

Q. Do you know a man named Hartmann?—A. Hartmann?

Q. Yes.—A. I knew of a gentleman, Hartmann, that worked there in the room.

Q. In the room?—A. Yes, sir.

Q. Did you have any conversation with him during the recount?—A. No; I did not know him that well.

Q. Have you had any conversation with him since?—A. No, sir.

Q. Can you fix in your mind now the date and the day on which Mr. Dempsey made his second statement?—A. His second statement?

Q. Yes, sir.—A. It was previous to that evening that he made the remark, you know, about that the watchers were going to be expelled from the room if they didn't keep their hands out of the ballots. It was the following day.

Q. There was some discussion between——A. We started on Wednesday; that was Thursday—yes; it was on Friday.

Q. Now, that is what we want to get at; it was on Friday?—A. Yes; it was on Friday.

Q. Was it in the morning or afternoon?—A. The night before——

Q. About 8 o'clock in the evening, you said?—A. Somewhere near 8 o'clock in the evening is when he made that discretionary about the watchers going to get out of the room if they did not keep their hands off the ballots.

Q. Was that the first or second statement?—A. That was the first offense there when some of the watchers got their hands there in the pie. Well, I guess it is no more than right. I don't know. I never have done that work before, but I have been a challenger before at the polls, but I always had a right to challenge a man, but I did not know it you had that same right watching at a recount; I had never done that before, see?

Q. Now, what I am trying to get now is the day of the second statement, not the first one, but the second statement.—A. The second statement?

Q. Was that in the morning or the afternoon of Friday?—A. You say was it in the morning or afternoon of Friday?

Q. Was it in the morning or afternoon, according to your recollection?—A. Let's see; it was the next day. Well, I could not state positively sure whether it was in the afternoon or whether it was in the morning.

Q. But you think it was on Friday, do you?—A. It was Friday.

Q. It was Friday?—A. It was Friday. I know it was the following day, because I am most sure that Dempsey had a wrangle with Glendy Arnold, and he told him to get right out on the floor and come out with this statement, and whether Glendy Arnold was busy there talking to somebody or not I don't know, but Dempsey come out and he made that speech then about the watchers.

Q. The second one?—A. Yes; not to take any individual numbers from any individual ballot, or principal ballot, what you might call a chosen or challenged ballot.

Q. Excepting where it was a disputed ballot?—A. Positively.

Q. And the disputed ballots, they kept numbers of?—A. Yes; the judges and clerks done that.

Q. Do you know whether Mr. Arnold or other members of the board were in the room at the time Mr. Dempsey made this statement?—A. No; I do not know. I do not know exactly whether they were there or not.

Q. You just referred to Mr. Arnold——A. Yes. Mr. Arnold come following him a little later on, and said the same thing, that we were not allowed, that evening; it was just about an hour and a half before we went to supper.

Q. About an hour and a half before you went to supper?—A. Yes. He come out and made it plain to us then yet.

Q. That you were not to handle the ballots?—A. Absolutely not.

Q. And that was your first instruction too, all the way through, that you were not to handle any ballots, that that was to be done by the two Republican and two Democratic clerks?—A. That is correct. We were just there to watch it.

Q. Now, Mr. Saller, this is a very important question: About how many ballots did you have an opportunity to examine during the entire week that you were there, in which you thought there was a similarity of handwriting?—A. You mean to examine them by hand?

Q. No; where you in your own judgment thought there was a similarity?—A. Where I thought just by seeing them?

Q. Where Mr. Bogy's name was scratched and my name was written in?—A. About how many?

Q. Yes, all together; that you were sure there was a similarity of handwriting?—A. Well, I can't—I would not like to make a sure statement on that, because I can not do it; it can not positively be done.

Q. Was there about five?—A. Oh, there was more than that.

Q. Ten?—A. There was more than 10.

Q. Fifteen?—A. Yes; it was more than 15.

Q. Twenty?—A. More than 20.

Q. Twenty-five?—A. Yes; it is more than 25.

Q. Thirty?

Mr. Feigenbaum. Just a minute. I object to that method of examination. The witness has said that he can not give us any idea; there is no use to ask him to guess five more continuously; you can do that up to the time you reach 500. I don't think that is a proper way to examine him. If the witness knows he ought to say so.

Maj. Hawes. Then you are uncertain as to the number?

A. Yes, sir; I am. I had rather have it that way, too. I don't want to swear to anything that I can't back up.

Q. You would not say there were any such number that you saw?—A. I can not state the real required amount, but I will say in this particular ward it looked very bad, very bad.

Q. One particular precinct?—A. Yes; the one I have stated there, ward 26, precinct 17, there were 33 scratched ballots, and I will vouch to say that three-fourths of them were not voted properly, or they were scratched by somebody else, somebody else had written it in there.

Q. I believe you stated that you served in an election booth as judge, or clerk, or watcher, or something in the election?—A. Yes; in south St. Louis.

Q. In south St. Louis?—A. Yes.

Q. They are a rather intelligent class of people down there?—A. Well, there is intelligent people all the where.

Q. But especially down there. Did you serve as clerk or judge, Mr. Saller?—A. No sir.

Q. What was the position?—A. Just challenger.

Q. Was it the custom for a judge or clerk of election to write in the name on a ballot at the request of a voter where they could not read and write?—A. I have never seen it done.

Q. Not down there?—A. No.

Q. But you know that it is done, don't you?—A. I would not swear to that; I don't know if it is done or not.

Q. In a big Negro precinct——A. I would not say that, Mr. Hawes, because I have never seen it done.

Q. In a big Negro precinct where a large number of negroes can not either read or write, how could they scratch a ballot unless it was written in by some one else?—A. Well, I can't state that because I have never seen it done, and never had that experience of seeing anything in a Negro district.

Q. Well, you have seen our form of ballots, have you not?—A. Oh, yes.

Q. In the case of an illiterate person who could neither read nor write and who desired to scratch a ballot and write in the name, it would necessarily have to be done by one of the judges or clerks, would it not?—A. Well, sure, in that case; but we could challenge that vote, though, if we wanted to, positively.

Q. Yes; you could challenge it.—A. Yes, sir.

Q. But otherwise an ignorant person who could not read nor write would not be able to vote at all, would they?—A. Well, we could challenge his vote.

Q. I am not talking about the challenger. How could an ignorant man that could not read nor write cast a ballot without the assistance of the judges or clerks?—A. Surely. I understand what you mean now.

Q. You don't know anything about the class of people that live in the seventeenth precinct of the twenty-sixth ward, do you?—A. No, sir.

Q. You don't know whether there are any illiterates living there?—A. No, sir. I don't believe I know where the seventeenth precinct is; in fact, I don't, for a fact. On a bet I don't believe I could tell you where it lay.

Maj. HAWES. That is all.

Redirect examination by Mr. FEIGENBAUM:

Q. Don't this class of voters known as illiterate voters, whether colored or otherwise, don't they usually cast a straight ballot when they come in?

Mr. CUMMINGS. I object to that as wholly immaterial.

Mr. FEIGENBAUM. All right. Let it go.

Mr. BOGY. I want to state for the record that some of the nicest people in St. Louis live in the seventeenth precinct of the twenty-sixth ward.

Mr. CUMMINGS. Don't put that in the record. It is absolutely incompetent. I did not hear Mr. Bogy's request to have it put in, but inasmuch as he has made the request I object to the statement going in, as it is testimony sought to be introduced by an unsworn witness, and is opinion evidence.

Mr. FEIGENBAUM. If you object to it, we are willing that the whole thing be stricken out.

Maj. HAWES. I want to inject now my objections to any testimony——

Mr. FEIGENBAUM. Mr. Commissioner, I submit that is unfair. We have already said if they want it stricken out it can be stricken out.

Maj. HAWES. I object to any testimony being given by Mr. Bogy unless it is under oath. If he desires to testify on any subject it must be as a witness under oath, subject to cross-examination.

Mr. FEIGENBAUM. The record will show this is an attempt to encumber the record. We have already offered to strike it out, and no objection was necessary.

Maj. HAWES. I have made this objection several times, attempting to put matter in the record when the witness is not under oath, so that each time it is attempted, the loss is created by the contestant, and not by the contestee.

(Signature waived by agreement.)

FRED L. BECKER, a witness of lawful age, being produced, sworn, and examined on the part of the contestant, deposeth and saith:

Direct examination by Mr. FEIGENBAUM:

Q. Please state your name.—A. Fred L. Becker.

Q. Where do you live, Mr. Becker?—A. 1956 Sidney.

Q. Were you during the five days from January 12 of this year until January 17, while the recount was being conducted at the city hall in the election commissioners' office, acting as watcher for Mr. Bernard P. Bogy in the Bogy-Hawes contest?—A. I was.

Q. Can you tell us what table, if any, you were at?—A. Table No. 3, I think: the first table as you come into the door, at the north side, right as you come into the door.

Q. Mr. Becker, were you there the first day the recount was started on the 12th?—A. I was.

Q. Do you recall instructions being given the judges and clerks, as they were called, being deputy election clerks and the watchers, as to what their conduct should be during the recount?—A. I did.

Q. Were those instructions read from printed manuscript of some kind?—A. None that I remember.

Q. None that you remember. Who was the announcement made by as to what instructions would govern you in your work?—A. Mr. Dempsey made an instruction about 8 o'clock on Wednesday evening.

Q. Wednesday was when they——A. When we started at night and were that the watchers were not allowed to take any numbers of any ballots, or count them, or touch them, or anything at all; if they did they would be excluded from the room.

Q. Was that Wednesday or Thursday?—A. That was Wednesday evening.

Q. You are sure of that?—A. Yes, sir.

Q. Do you recall prior to that any statement by Mr. Arnold, chairman of the board?

(No response.)

Q. If you remember it; if you don't say so. That is, at the outset of the count, just before you started?—A. No; I do not.

Q. You don't remember. Now, if any statement was made you do not recall it, as I understand?—A. No, sir; I heard one statement; that was the next day; that was Thursday.

Q. By whom?—A. By Mr. Dempsey, that stated that the scratched ballots were not allowed to be taken by number, they should be counted as cast, and all we could do was just sit at the table and just watch; but we were not allowed to take any memorandum of any scratched ballots of any kind, so we didn't.

Q. Was that first statement made on Thursday, and the second Friday, just to refresh your recollection?—A. The first statement was made the same day in the evening.

Q. Are you positive of that?—A. Positive that we were not allowed to—the watchers were not allowed to touch any ballots of any sort.

Q. Now, this latter statement that you have just given us of Mr. Dempsey, was that made on Thursday morning or Friday morning?—A. Thursday morning.

Q. Are you positive of that?—A. Yes, sir. It was the next day following.

Q. Following the first statement?—A. Following the first statement.

Q. You are sure you are not confused about the date when the first statement was made and the second?—A. Well, the first statement was made the same day; that I know.

Q. And you started on the 12th, on Wednesday?—A. I started the first morning.

Q. Now, following that statement, whenever it was made, the second statement you refer to by Mr. Dempsey, that the watchers were not to keep any tab of numbers of scratched ballots or touch them in any way, did Mr. Bogy follow with any statement?—A. Mr. Bogy said that that is the reason he had the ballot boxes open, was to get a square recount of the scratched ballots, because he knew right there that he would find fraud on the scratched; but if he could not get any square count or square deal on them, that he would have Congress to do it. That was the statement Mr. Bogy made right after Mr. Dempsey made the statement, and from that time on we never took any numbers of the ballots or anything. In other words, we had to sit there just like the crepe on the door and just watch; that was all. After you have been instructed you can't do anything at all; what are you sitting there for?

Mr. FEIGENBAUM. That is all.

Cross-examination by Maj. HAWES:

Q. What is your business, Mr. Becker?—A. Butcher.

Q. How much do you make a day or week as a butcher?—A. $35 a week.

Q. Are you employed now, Mr. Becker?—A. No, sir; I am not.

Q. You are out of employment?—A. Yes, sir.

Q. How long have you been out of employment?—A. Three weeks.

Q. What are your politics, Mr. Becker?—A. What do you mean?

Q. Are you a Democrat or a Republican?—A. I am a Republican.

Q. You were present during the entire recount, Mr. Becker?—A. I was.

Q. And the first instructions which were given to the clerks and the watchers were read by the president of the board—do you know Mr. Arnold? A. I know him.

Q. Were not these instructions read, or certain instructions read, by Mr. Arnold, the first day?—A. Mr. Arnold read the instructions on the whole contest to us clerks.

Q. The first day?—A. Yes, sir.

Q. Do you remember under section 8, without repeating all of it—I will read it to refresh your recollection [reading]: "If there is any doubt as to whether any ballot has been properly marked, the clerks shall place said ballot in the envelope for the decision of the board of election commissioners. Also place in this envelope all ballots that have no corresponding number on the poll books and those that have duplicate or triplicate numbers; also all disputed ballots." Do you remember that?—A. Yes, sir.

Q. Did you see the instructions that were posted up in the room?—A. I saw the instructions posted on the posts.

Q. On the posts; yes.—A. Regarding the disputed ballots.

Q. The general instruction, as you understand it, was that the ballots were to only be handled by the two Republican clerks and the two Democratic clerks?—A. Yes, sir.

Q. And that you were not permitted to assist in the recount or in the handling of the ballots?—A. Yes, sir.

Q. That was your understanding?—A. That was our instruction.

Q. Do you remember that later the same day, or the next day, that Mr. Arnold made a second statement? I will come to Mr. Dempsey later on; I am talking about Mr. Arnold now. To refresh your memory, his second statement was that where there were duplicate or triplicate ballots, but the total of the ballots and the returns were correct, that then the clerks of election should count those triplicate ballots for the party for whom they were cast?

(No response.)

Q. Well, I will help you again. To refresh your memory, the first instruction was to put all duplicate and triplicate ballots in the disputed envelope?—A. That was the first instruction.

Q. That was the first instruction. Then didn't Mr. Arnold in his second instruction say that in order to save time that where there were duplicates or triplicates that they should be counted for the person for whom they were cast, provided the total was correct?—A. I do not remember Mr. Arnold making the statement.

Q. You do not remember his making that statement?—A. No, sir.

Q. Do you know Mr. Dempsey?—A. Yes, sir.

Q. And Mr. Lammert?—A. I don't know Mr. Lammert; no, sir.

Q. And Mr. Buder?—A. And Mr. Buder.

Q. You did not see Mr. Arnold walk to the center of the room, with the other commissioners in the room at the time, and make the statement that I have just asked you about?—A. No, sir; I don't remember that.

Q. You don't remember that?—A. No, sir.

Q. Do you remember Mr. Arnold making any other statement?—A. No, sir.

Q. During the entire recount?—A. No; I don't.

Q. Now, the first statement that Mr. Dempsey made—he made two statements, did he not?—A. Yes, sir.

Q. The first statement was that watchers should not handle the ballots or assist in counting the ballots, or handling the ballots; that that should be done only by the two Republican and two Democratic clerks, and that if they did not stop handling the ballots they would have to leave the room. Was that the substance of the first statement?—A. Yes, sir; that was the first statement.

Q. That was the first statement. Now, was this not the second statement, that no watchers were permitted to keep a record of the numbers of ballots excepting where the ballot was in dispute?—A. No. The second statement that was made by Mr. Dempsey was that we were not allowed to examine any scratched ballots whatever, and we was not allowed to put any numbers on a scratched ballot—any memorandum at all.

Q. Unless it was in dispute?—A. In dispute.

Q. Have you seen this record [handing witness paper]? You saw this kept, records similar to that kept by the clerks?—A. We say the record, but we were not allowed even to look at any of them.

Q. I asked you if you saw that record?—A. I saw it partly; yes.

Q. Didn't you see that the numbers of all disputing ballots were put down?—A. I saw that the numbers of disputed ballots were put here in one corner; yes.

Q. In one corner they were all kept?—A. Yes.

Q. Now, what Mr. Dempsey's second instruction was was to prevent the taking of indiscriminte numbers of ballots, and that the judges and clerks and the watchers were instructed that they should not keep these numbers excepting where the ballot was in dispute?—A. That was the second statement.

Q. That was the second instruction. So his second instruction was that wherever a ballot was disputed the number could be kept, but where it was not disputed it could not be kept.—A. We was not even allowed to take any number at all; that was our orders issued to us. We could only take and keep the amount of any kind of ballot, scratched ballot; we could keep only the amount, but no numbers.

Q. Now, there were two Democrats and two Republicans at your table, were there not?—A. Yes, sir.

Q. Did you see either of the two Republicans do anything wrong at that table?—A. No; I did not.

Q. Did you see either of the two Democrats do anything wrong?—A. No.

Q. Do you think it was an honest, square count?—A. I did not like the favoritism. Your watcher could do anything to the ballots he wanted to, and I couldn't.

Q. Who was my watcher?—A. I don't remember his name.

Q. Was it a man or a woman?—A. A man. Every time the two judges would decide on a ballot if he would call off a number and they would say, "Now, this is 266," and the other judge would say, "I can't see how that is 266." If it was a Democratic ballot your watcher would look at it and pull it and examine it and say, "Oh, make that 266."

Q. My watcher, then, was making objections and was examining ballots as he went along?—A. That is what he done.

Q. Did you try to do that?—A. Did I try to do it?

Q. Yes.—A. Whenever I tried to do it they said it wasn't right, it wasn't right.

Q. Who said that, the Republican clerk?—A. No; the Democrat.

Q. And you at no time asked the Republican clerk, who represented Mr. Bogy there, any question about this?—A. I did not.

Q. Just sat there and did nothing?—A. I just sat there and watched that your man—if your man could do anything I wanted to do the same your man done.

Q. Why didn't you ask the Republican clerks to allow you to do so?—A. Well, I did, after I found out, but we had more argument with your watcher on account of ballots that——

Q. What did the Republican clerk say to you when you asked him that?—A. They told me we did not have any business to do it, and they told your watcher to keep his hands out of it.

Q. He told you that the count was being made by the two Republican clerks and the two Democratic clerks?—A. Yes, sir.

Q. And that the watchers would have nothing to do with it?—A. Yes, sir.

Q. He made him quit, did he?—A. He made us quit.

Q. But you did not see anything that was improper, and you think it was an honest count?—A. At my table I did not see anything wrong.

Q. Didn't see anything wrong?—A. The only thing we wasn't allowed to do was to take the numbers of scratched ballots, and that was all.

Q. Well, you understood why that order was issued, did you not? Wasn't it generally discussed?—A. Well, I don't know. All I had——

Q. You know there is such a thing as secrecy of the ballot, and disclosing how a man votes?—A. Certainly.

Q. And if indiscriminate numbers were taken down of ballots, a man could then walk on the outside and get the poll book and find out who it was, and if he happened to be a Republican and scratched Mr. Bogy, and wrote my name in, Mr. Bogy could punish him politically for it?

Mr. FEIGENBAUM. We object to that as being without the evidence in the case; nothing in the record here indicates that any such practice was ever undertaken.

Maj. HAWES. Well, you know that if you took the number of any ballot away with you, and then brought it back here and compared it against the number on the poll book you could find out exactly how a man voted, couldn't you?

A. If we took the number.

Q. If you took the number?—A. If we took the number.

Q. Of course, if you did not take the number you could not do it?—A. No, sir.

Q. And you remember, though, that the numbers of all disputed ballots were kept, don't you, in that little record on the side that you spoke of a while ago?—A. Yes. I noticed a lot of undisputed ballots, and just like I say, if it was on a Democratic ballot or a Republican ballot, if we were only a ballot or two short or so, your watcher, of course, would say, "Well, let's make it even; settle it even." I thought if that was the case why shouldn't I do it? So our men said, "Nothing doing." So we took the ballots out. Your man wanted us to take undisputed ballots and ballots that were duplicates and count them all in one's favor, so we would not do it.

Q. And the Republican clerks and the Democratic clerks would not let him do that, would they?—A. The Republican clerks would not let the Democratic man do it, no; and we Republicans never had any duplicate ballots back there to begin with. We had maybe two or three, which we found duplicate numbers. But just like I say, your watcher was more than a clerk at our table; practically, he run that table.

Q. You didn't like my watcher?—A. No.

Q. Did he run the two Republican clerks?—A. Did he?

Q. Yes.—A. No. He never had a chance. We had two good men.

Q. You had two good men?—A. Yes. We had two good men. One man told him three or four times to keep quiet; that all he had to do was to sit there and watch.

Q. He called him down, didn't he?—A. He did.

Q. And made him stop?—A. And made him stop. And two or three times that he would stop, when he would get a ballot the clerks thought was wrong, "Let me see it." And he would take it and it would depend on the party it was for. If he thought it was right, he would say, "Let's count this."

Q. Well, the Republican clerks made him quit?—A. They couldn't do any more than make him quit.

Q. Well, they made him quit?—A. Sure.

Maj. HAWES. That is all.

Mr. FEIGENBAUM. They made him quit many times, didn't they?

A. Yes.

Mr. FEIGENBAUM. That is all.

(Signature waived by agreement.)

HENRY F. SALLER, a witness of lawful age, having been heretofore produced, sworn, and examined on the part of the contestant, was recalled by the contestant and further deposeth and saith:

Direct examination by Mr. FEIGENBAUM:

Q. Mr. Seller, you have been sworn. One question I overlooked asking you. Did you see any ballot boxes brought into the room where the recounting was being done which had already been opened?—A. Yes.

Q. Before they were brought in the room?—A. Yes; I was sitting right in the front, where they would bring them in and bring them out.

Q. How many of those did you see?—A. I seen one in particular. I called Mr. Bogy's attention to it. That was one; I don't know hardly the number, what table it was. You know where the board of election commissioners is, where the office is there. The second one, right in down there; not the last one or not the other one; it was right in the second one there. That was the only one I noticed that I seen in particular. I just had a change to see that. We were idle there at the time.

Mr. BOGY. That is table 11.

Mr. FEIGENBAUM. You say that it was open before it was brought into the room?

A. Yes. Some of the boys were gone, and I was sitting there idle, and I happened to see it, and I said, "Oh, boy! Look at that one." It was wide open; it was for a fact.

Q. It was opened before it was brought into the room?—A. It was open. How it was opened I could not tell.

Mr. FEIGENBAUM. That is all.

Cross-examination by Maj. HAWES:

Q. Now, Mr. Saller, you know these ballots were kept in the vault, don't you?—A. Yes, sir.

Q. You know the Democratic chief clerk and the chief clerk representing the Republicans have the key to that vault, don't you?—A. Yes, sir.

Q. And that the vault can not be opened unless both of the clerks are present?—A. That is a part I don't know anything about. That is just what I seen.

Q. Now, you saw some boxes on which the fastening was broken, but you don't mean to say that they had been opened, or do you mean to say that?—A. I can not say whether it was done by fraud, or whether fraud was committed, or anything.

Q. When counsel tried to state that they were open boxes did you mean to say that those boxes had been opened or that you simply saw the fastenings broken?—A. This box was open, positively open, Mr. Hawes. I tell you frankly it was absolutely open.

Q. Now, do you mean open or it had been opened? There is a whole lot of difference between the two, whether the box was open or had been opened.—A. The seal was broke. What would you state? That it was open then, wouldn't you? You could fold the lid back and forth [illustrating].

Q. You are an expert man. Let me suggest that these boxes are put in a vault where the temperature is very high, and they are piled one on top of another, and the heat in some cases loosens the paste, and the pressure on the top pushes them out from the sides. So, what I want to get at is, did you say that you saw a box that had been opened or that the box was open?—A. Get me right now. I don't want to be misconstrued about this either way. This box was so that you could take the lid [illustrating], and it was not shut. I did not see anybody open it, understand, never seen that end of it, but I did see that the box——

Q. The fastenings were broken?—A. You could open it, Mr. Hawes.

Q. But whether it had been opened by anyone or not you don't know?—A. Oh, no; I wouldn't answer on that.

Q. You dont' know that?—A. No, sir.

Q. Mr. Saller, you concluded your testimony some half or three-quarters of an hour ago; who talked to you since you have left here?—A. Who talked to me?

Q. Yes.—A. Well, I will tell you about how that come up. I asked Mr. Bogy, I said, "Mr. Bogy, there is one question there that none of them asked me." And I didn't pay no particular attention: I wasn't going to say anything unless you asked me something. I told him, I says, "Mr. Bogy, you omitted something; failed to ask me." I says, "about that ballot box" that I called his attention to when the count was going on at the city hall. I brought it up to him. I was sitting right in the front there and I could not help but see it. I was idle at the time.

Q. You could see anybody that went in and out of that vault, could you?—A. Yes; I could look clean into the place, as far as that is concerned.

Q. Then you remember that after you called Mr. Bogy's attention to this that he went into the vault, accompanied by the Republican chief clerk and the Democratic chief clerk, to examine the boxes that were in the vault?—A. I never seen him go in.

Q. You did not see him go in?—A. No, sir; I didn't.

Q. With Mr. Claudius and Mr. Stansbury?—A. No; I didn't notice anybody going in. The box was taken from the—well, whatever they call it, the counter, I guess you would call it a counter. You know where the window is, Mr. Cummings. It was taken from there to the table, as we know them by Mr. Hurley, or Whaley; I don't know his name.

Q. You did not see Mr. Bogy, then, go in with the two chief clerks?—A. No; I did not see him. All I seen was that open box, go to the table; that is all I seen.

Maj. HAWES. That is all.

The WITNESS. But I did call Mr. Bogy's attention to the ballot box being open.

Maj. HAWES. That is all.

Mr. FEIGENBAUM. It was usual to open these boxes when they reached the table.

A. Yes, sir.

Mr. FEIGENBAUM. That is all.

(Signature waived by agreement.)

Maj. HAWES. May I make a statement here? In order to save time, from the witnesses that have preceded it has developed that there were four instructions issued, and counsel for contestee can save time by referring to those as instructions Nos. 1, 2, 3, and 4, and will thus prevent a long cross-examination to bring out those facts by contestee.

Mr. FEIGENBAUM. We will be glad to use those instructions in that form if it will save time.

(At this time, 1.15 p. m. o'clock, the further hearing of these depositions was adjourned until 2.30 o'clock p. m. of the same day, to be resumed at that hour at the same place.)

(And at 2.30 o'clock p. m. of said day the further hearing of said depositions was resumed at the same place, and the following proceedings were had:)

(Appearances: J. M. Feigenbaum for the contestant; Campbell Cummings and Peter R. Barrett for the contestee.)

JOHN W. McCLUSKEY, a witness of lawful age, being produced, sworn, and examined on the part of the contestant, deposeth and saith:

Direct examination by Mr. FEIGENBAUM:

Q. Will you please state your name?—A. John W. McCluskey.

Q. What is your occupation, Mr. McCluskey?—A. Well, I am a locomotive engineer.

Q. Where do you reside, Mr. McCluskey?—A. 1214 St. Ange Avenue.

Q. Are you married?—A. Yes, sir.

Q. You live with your family?—A. Yes, sir.

Q. Mr. McCluskey, from the 12th of this month until the 17th, and during any period of that time, did you act as a watcher at the recount in the election commissioner office of St. Louis, in the Bogy-Hawes contest?—A. I did; for four days.

Q. For four days, you say?—A. Yes.

Q. Now, what day did you start, on Wednesday or Thursday?—A. On Thursday.

Q. And can you recall what table you were watcher at?—A. Now, I don't know how they had them numbered there.

Q. It is not material, if you don't know.

Mr. BARRETT. You started what date, did you say?

Mr. FEIGENBAUM. The 13th.

Q. Then you were not present the first day of the contest?—A. No.

Q. And, of course, you don't know of any instructions that may have been read on that day by the election commissioners?—A. No.

Q. Did you hear any instructions given to the judges or clerks of election in that office or to the watchers, either by Judge Arnold, Mr. Dempsey, or any other member of the board of election commissioners?—A. About the only instructions I think I heard was possibly Friday, I think it was, in regard to some scratched ballots.

Q. What were those instructions?—A. As near as I can remember—I did not pay very good attention to it at the time, but as near as I can remember, it was in regard to the watchers not to take the numbers of the scratched ballots.

Q. Who gave those instructions to the watchers?—A. Mr. Dempsey gave those instructions.

Q. Mr. Dempsey; can you give us the words he used?—A. No; I can not. I did not pay very much attention to it, just listened, and heard him say something about the instructions to the watchers not to take the numbers of the scratched ballots.

Q. Instructed not to take the numbers of the scratched ballots?—A. Yes.

Q. Did he say which scratched ballots?—No; not that I remember.

Q. All you recall him saying was that the watchers were not to take the numbers of the scratched ballots?—A. Yes, sir.

Q. Now, Mr. McCluskey, immediately after Mr. Dempsey's statement, did you hear Mr. Bogy follow with a statement?—A. Yes. Mr. Bogy, practically right following Mr. Dempsey, come in there and made some sort of a remark about getting a square deal, or if he did not get it there he would get it in Washington; something to that effect.

Q. And was that in reply to Mr. Dempsey's statement?—A. Practically in reply to Mr. Dempsey's statement.

Q. That no numbers were to be kept of scratched ballots?—A. No.

Q. Did Mr. Bogy make any statement as to what he wanted scratched ballots for, or a memorandum kept of scratched ballots, that you recall?—A. I think it was kind of included in his talk there that if he did not get a square deal there that he would take it to Washington and get a square deal.

Q. You understood him as answering the statement made by Mr. Dempsey?—A. Yes, sir; practically so.

Mr. BARRETT. Wait a minute. Let him testify himself. You have done that repeatedly.

Mr. FEIGENBAUM. Now, Mr. McCluskey, tell us what occurred at your table, with reference to any of the precincts counted as to any irregularities.

Mr. BARRETT. Wait a minute. I object to the use of that term, asking him if he has got any criticism of anything. Let him state what the facts are.

Mr. FEIGENBAUM. That is what I am asking him, any irregularities.

Mr. BARRETT. Oh, no.

The NOTARY. Go ahead, Mr. Witness. Answer the question.

The WITNESS. What was the question?

(Last question read as follows: "Now, Mr. McCluskey, tell us what occurred at your table, with reference to any of the precincts counted, as to any irregularities?")

A. I think there were some.

Mr. FEIGENBAUM. Will you outline or detail those that you considered irregularities.")

A. (Referring to papers.) In the fifth precinct of the eighteenth ward——

Q. What occurred there?—A. There was one ticket scratched there, a Democratic ballot that Mr. Bogy's name was written in and kind of half way rubbed out again. They claim that was a rejected ballot.

Q. That ballot was rejected?—A. Was rejected. Eighteenth ward, fifth precinct. Nineteenth ward, twelfth precinct, there was 22 Socialist ballots and 1 Republican ballot—85 Republican ballots.

Mr. BARRETT. You have got one Republican ballot.

Q. The one Republican and the one Socialist—first, there was 22 Socialist straight scratched for Hawes; then there was 1 Republican ballot scratched for Hawes. That was one of the duplicates, and another duplicate Socialist scratched for Hawes. And then there were 84 straight Republican scratched for Hawes. I made a little remark at the time on this list, "Note handwriting."

Mr. FEIGENBAUM. Explain that.

A. I considered the handwriting the same. It looked very much to me that all of that was scratched in the same handwriting.

Q. What do you mean "were scratched," just the line, or the name written in?—A. No; the name written in. They were scratched tickets, but the name Harry B. Hawes was very—seemed to me to be the same handwriting on all of them.

Q. In all those ballots of almost 100?—A. Eighty-four, 22, 84—24.

Q. That is over 100 ballots you referred to?

Mr. BARRETT. One hundred and seven.

Mr. FEIGENBAUM. Yes; over 100 you refer to as having been scratched, and the name of Harry B. Hawes inserted in handwriting which appeared to you to be all identical?

A. It appeared to me to be the same.

Q. Now, before you passed those, did you keep any note of the number of those ballots?—A. No.

Q. Why didn't you?

Mr. BARRETT. Wait a minute; are you going to cross-examine your own witness?

Mr. FEIGENBAUM. Oh, no. I am going to get the reason why he did not.

A. Well, I called Mr. Bogy's attention to it, to the fact, because I did not note it until after they made the count. I called Mr. Bogy's attention to the fact that the handwriting looked very similar to me. He was the man that had employed me, and he was the man that I was supposed to report to.

Mr. FEIGENBAUM. Can you tell us what day that occurred?—A. No; I can not state which day it was now.

Q. Now, was that before or after Mr. Dempsey had made that statement about not keeping any track of the numbers of scratched ballots, that you can recall?—A. Well, I should judge—let's see; three, five—that might possibly be Saturday. I think we finished up three on Monday, and I think that was on Saturday.

Q. That was Saturday this occurred?—A. I would not be positive, but I think it was Saturday.

Q. I think you stated that on Friday. Did you say the morning or afternoon? I am not clear on that.

Maj. HAWES. He did not say either one or the other. That is an attempt to lead the witness; but he never made any such statement.

Mr. BARRETT. He has been doing that right along.

Mr. FEIGENBAUM. He did say that Mr. Demysey made the statement Friday, as I understood it.

Maj. HAWES. Ask the witness when it was.

Mr. FEIGENBAUM. Did you or did you not—I do not want to attempt to make any statement you haven't made. This statement you refer to, made by Mr. Dempsey, when was that made, what day?

A. I think it was Friday; Friday morning, if I am not mistaken.

Q. I thought you said Friday before. Now, then, if that statement was made Friday morning, when did this occur with reference to the nineteenth ward and twelfth precinct that you have outlined about the similarity of handwriting? Was that after the statement made by Mr. Dempsey?—A. Nineteenth, twelfth, if it occurred on Saturady it certainly was after the statement Mr. Dempsey made.

Q. And to your best recollection it occurred on Saturday, did you say?—A. I am just judging by the balance of the precincts that we went through.

Q. Mr. McCluskey, when you called Mr. Bogy's attention to this matter, as you said you did, did Mr. Bogy make any request to see those ballots?—A. Mr. Bogy came over to the table and asked the judges, or clerks rather, at the table there not to close the box, because they had the ballots in the box at the time, right after he made the holler about it, and one of the clerks spoke up and says, "Well, we have got to close the box now." He says, "Well, I am going to see the commissioners and see if I can not keep the box open." Well, there was remarks made around there about delaying the count, costing money, etc. Mr. Bogy went in to see the commissioners from what I can understand.

Mr. BARRETT. Wait a minute. Don't testify to anything except what you know from your own knowledge.

A. Well, Mr. Bogy said, "I will go in and see the commissioners." Whether he seen them or not I don't know.

Mr. FEIGENBAUM. That is all you know about the matter?

A. The books was closed.

Q. And the books was closed, and nothing further done, as fas as you know, about the matter?—A. No.

Q. What next precinct did you notice any irregularity in at the recount?—A. Nineteenth, twelfth. That was the last one?

Q. Yes.—A. Twenty-two, eighth precinct, 83 scratched Republican tickets for Hawes, "Note handwriting." I just put that on there. I considered the similarity in the handwriting.

Q. Now, can you explain that to us. Those 83 Republican ballots that were scratched, you say there was a similarity in all of them?—A. I can not say all of them. I just glanced at them, you know, as they counted them off and turned them over [indicating.]

Q. Now, in how many, if not in all, did you notice the similarity?—A. Well, when I took and formed my estimate just by glancing at them I would have practically said all of them was the same.

Q. Practically all of them the same?—A. Practically all of them the same.

Q. There may have been a few of them that were not, but the majority were?—A. Yes, sir.

Q. Was anything done with reference to that matter?—A. No, sir.

Q. Nothing was done?—A. No, sir. The boxes were closed up and put away.

Q. The twenty-second ward, of course, that occurred after the 19th?—A. Yes, sir.

Q. Now, what was the next precinct where any irregularities were noted by you?—A. In the twenty-sixth ward, sixteenth precinct, we had one ballot that was disputed and put in the disputed envelope.

Q. That was put in the disputed envelope?—A. Yes. On a Republican ticket Bogy was scratched and Hawes's name wrote in. Then Hawes's name was rubbed out and the scratch and Bogy's name was rubbed, but it still left a faint, distinct line through there; so they disputed it. and put it in the disputed envelope.

Q. What others did you notice?—A. Well, we had another one there, one other there. I can't say what ward or precinct it was now, because they kind of straightened it out afterwards, where it was in the count. There was a mistake made of about 100 votes or so, but they straightened that out. When they counted them they just overlooked 100 votes and put them in the box, and about that time I was making out my sheet. and I could not understand why there was such a big difference in the vote and I called attention to it: and they had rung up all the ballots on the sheet. So they said themselves there must be some mistake here; and then they went through and began to count them over. and they found these 100 ballots. So that was straightened out.

Q. Do you know how those 100 ballots were cast?—A. It was 100 Republican votes.

Q. One hundred straight Republican votes?—A. That is what drew my attention to it. the difference between the original count and the count there, and all the names was rung up on the sheet.

Q. Had the box been sealed?—A. No: I don't think the box had been sealed.

Q. The ballots were simply returned?—A. Yes, sir.

Q. And the box was still open?—A. They had put them in there and were making out the sheet when I noticed the discrepancy in the votes. and I noticed the numbers had all been rung up on this sheet. so I called their attention to it. and said. "There must be something strange here." And then they counted them over and they found 100 votes.

Q. Found 100 Republican votes?—A. That is about all I noticed. about the only discrepancies I noticed, or irregularities, or whatever you call them.

Q. I am going to ask you whether or not you observed the conduct of the election commissioners toward the two parties involved in this contest, contestant and the contestee. Did you notice their demeanor toward the two as far as the recount was concerned?—A. Well, no; I never particularly noticed it. Mr. Dempsey seemed, from his conduct—of course, this is just my opinion——

Q. Go ahead.—A. That he was just a little bit careless of the Republicans' interest there.

Q. Well now. did he show any partiality? If so, to whom?—A. Well. I can not say, not at the table I was at: he didn't show any toward me. and my attention was toward the table I was at: I paid strict attention to what I was there for at that table.

Q. Did you observe any partiality shown to anyone?—A. I did not observe any other tables at all. I paid strict attention to the table I was at. I thought that was what I was there for, and I did not bother about any other of them.

Q. Did you or did you not notice whether any partiality was shown to either the contestant or contestee with reference to this recount?

Maj. Hawes. I object. The witness has stated that he only watched his own table and paid attention to matters that took place at that table; and the question is leading.

Mr. Barrett. And that none was shown at his table.

Mr. Feigenbaum. Go ahead and answer the question.

A. No; I never noticed any.

Q. All you know about what took place is what actually occurred at your table?—A. At my table; yes, sir.

Q. Did you hear any instructions issued by Commissioner Dempsey that you have outlined. as having occurred on Friday morning?—A. No, sir.

Mr. Feigenbaum. That is all.

Cross-examination by Mr. Barrett:

Q. Now. Jim, with reference to ward 18, precinct 5. you say there was one rejected ballot?—A. Yes.

Q. And that ballot was found in the rejected envelope returned by the judges and clerks of election to the election commissioners?—A. I don't know where it was found.

Q. Well. it was not amongst the other ballots, was it?—A. I can't say where it was found. It was rejected, I know, during the count, when they were counting the ballots.

Q. What am I to understand by that? Do you mean it was rejected by the judges and clerks of election and returned to the election commissioners that way, or was it disputed by the recount clerks in the election commissioners' office or in the disputed envelope?—A. No; it could not have been a disputed ballot, because I got down "A rejected ballot good for Bogy." Now, it possibly might have been in that rejected envelope; I can't say.

Q. You are not sure about that?—A. No.

Q. But at any rate a memorandum was made of it and it was referred to the election commissioners for their decision?—A. No; they rejected it.

Q. Who rejected it?—A. The clerks.

Q. Didn't count it for either one?—A. No; I guess it was not counted for either one.

Q. There was no memorandum made by the clerks on their sheet?—A. Sure; I guess the clerks must have made a memorandum of it, because they had regular forms in there to fill out, a place for rejected ballots, and all.

Q. Didn't they make it in that instance "one rejected ballot" and give the number of the ballot, and so report it to the board of election commissioners?—A. I can't say what they done.

Q. I hand you a sheet for ward 18, precinct 5, signed by O'Reilly, Smith, Carroll, and Haas, and ask you to look at that, please, and ask you if that is the form that was used by the clerks in the recount, being the same form now used in the certificate of election commissioners in the record of this case?—A. I was in there four days, and I never looked at the forms they had there.

Q. You did not look at their forms?—A. I did not look at their forms.

Q. So that, as far as the eighteenth ward and fifth precinct is concerned, you don't know whether they reported that to the election commissioners or not, do you?—A. About that rejected ballot?

Q. Yes.—A. No; I don't know what they done about it.

Q. And then, if they marked it on their sheet "rejected ballot" and gave the number of it and put it on their sheet that way you would be mistaken in saying they rejected it altogether and never counted it, wouldn't you?

Mr. FEIGENBAUM. Let him look at the sheet. That doesn't show what you say.

The WITNESS. What is that, Pete?

Mr. BARRETT. I am asking you this: If the recount clerks of the election commissioners' office designated that particular ballot as a rejected ballot and gave the number of it and so designated it on the sheet on which they made their report, and which they signed, if they did that, then you would be mistaken in saying that they rejected it altogether?

A. Well, it was a rejected ballot the way we counted it; that is, I put it on my sheet as a rejected ballot.

Q. Jim, let me get your idea or understanding about a rejected ballot. "Rejected ballot" has a well defined and understood meaning, being one that the judges and clerks at the election refuse to count for some reason, and put that ballot in an envelope marked "Rejected ballots" and return it, together with the ballots, to the board of election commissioners, together with their returns of the election, and that is what is known and understood as a rejected ballot. In this recount made by the election commissioners a disputed ballot is one about which there is some doubt whether it should be counted for either candidate, or counted at all, a notation being made thereof by the recount clerks on their sheet, and placed in an envelope marked "Disputed ballots" and referred to the board of election commissioners for their decision. Now, we have two classifications there, a rejected ballot being one rejected by the judges and clerks officiating at the election, and a disputed ballot, a ballot which there is doubt as to whom it should be counted for, or counted at all, and placed in an envelope marked "Disputed ballots," and referred to the board of election commissioners. Now, without understanding, what do you mean with reference to this particular ballot that you refer to?—A. Well, this must have been a ballot rejected by the judges and clerks of the regular election; and when I looked at it I could not see anything wrong with it, and I thought it was a good vote for Bogy.

Q. Well, that was your opinion about it?—A. That was my opinion; yes, sir.

Q. Now, I hand you this sheet, ward 18, precinct 5, signed by O'Reilly, Smith, Carroll, and Haas, the recount clerks of the election commissioners, and ask you if that sheet does not contain the notation "Rejected ballot" under the column marked "Disputed," and do they not give the number of the ballot?—A. They make a report here, "One rejected ballot," but I don't see no number to it.

Q. Well, up in the last column on the righthand side there [indicating]?—A. Them are disputed ballots, aren't they?

Q. Don't they in that column indicate that that ballot is not disputed?—A. There is two of them there, ballot 107 and ballot 312, and marked "No vote."

Q. They give the number of the ballot, don't they?—A. Two of them: and it has got a notation, "No vote," under them.

Q. Now, Jim, did you yourself make a notation of the ballot that was rejected that way—take the number of it?—A. Yes.

Q. What is the number you have?—A. 457.

Q. 457. Is that the one that you have? Now, was that ballot sent back in the rejected envelope?—A. I can't say where they put it.

Q. Then, you don't know?—A. No.

Q. Now, you made a notation of that, did you?—A. Yes, sir.

Q. On your sheet?—A. Yes, sir.

Q. You made a notation of it on a piece of paper; you made a notation of the particular ballot on a piece of paper?—A. Yes, sir.

Q. And you referred to that piece of paper in your testimony here to-day for the purpose of refreshing your memory, so that when your memory was refreshed you could testify of your own independent recollection?—A. Yes.

Q. Did you call Mr. Bogy's attention to that?—A. I don't recollect if I called his attention to this special occasion or not, because as soon as we would get through with the count I would always bring my report right in to Mr. Bogy.

Q. You gave that particular sheet or paper to Mr. Bogy?—A. Yes; I went in, but I did not give him that sheet; I just made my report from that.

Q. You have those sheets in your possession now; when did you obtain them back from Mr. Bogy?—A. I never gave them to him.

Q. Then you never turned the sheets over to Mr. Bogy?—A. No; I just went in and made a report.

Q. Just made a verbal report of it?—A. And he would look at them and take the number of the Bogy-Hawes vote.

Q. That is, you gave Mr. Bogy the information and he put it down on a separate piece of paper?—A. Off of these reports as soon as the count was finished.

Q. And you gave him the number of the ballot, did you?—A. I don't know if he took the number of the ballot or not.

Q. Well, you had the number of it yourself?—A. Yes.

Q. And you could have given it to him?—A. Yes.

Q. And if you did give it to him he would have it in his possession, or should have it in his possession to-day?

Mr. FEIGENBAUM. I object to that. He said he did not give it to him.

Mr. BARRETT. No; he said he didn't remember.

Mr. FEIGENBAUM. No; he said he did not do it.

Mr. BARRETT. I will ask the witness, did you or did you not give the number of that particular ballot to Mr. Bogy?

A. I don't remember.

Q. You don't remember?—A. I don't remember in that specific case; no.

Q. Now, you were at this table, throughout, as a watcher?—A. Yes, sir.

Q. The same table?—A. I stayed at the one table the four days I was there.

Q. And if there was any ballot in dispute—by that, I mean doubt as to whether they should be counted for one candidate or the other, or candidate at all, a notation of that was made by the clerks on a sheet, and the ballot itself was placed in an envelope marked "Disputed ballots," and referred to the board of election commissioners for their determination, wasn't it?—A. I can't say if they were placed in an envelope and sent in there or not. I know them 84 was not placed in no envelope.

Q. I am asking you about the eighteenth ward, fifth precinct.—A. Eighteenth ward, fifth precinct?

Q. Wasn't that done in that instance?—A. That was a rejected ballot.

Q. Wasn't there also other ballots placed in there, one, two, three, four, five ballots? Look at it under the heading of "Disputed ballots," the column headed "Disputed ballots."—A. No; I think they were put in there under the heading of "No votes," if I am not mistaken.

Q. Then, if I understand you rightly, Jim, there were no disputed ballots from that table there put in the envelope marked "Disputed ballots" and referred to the board of election commissioners; is that correct, during the entire time?—A. No.

Q. How?—A. No.

Q. What do you mean by "no"; there was none of them referred to the board?—A. That is, directly not.

Q. That is what I mean—put in the disputed envelope and marked on the sheet by the clerks under the column designated "Disputed ballots" and referred to the board?—A. They did not put them in any envelope and send them to the commissioners.

Q. I don't think you understand me, and I have no desire to confuse you. But the rule of recount, as I understand it throughout, was this: When any ballot was in dispute they would be placed in an envelope, which envelope was marked "Disputed ballots" and a notation of those particular ballots would be made on the sheet prepared by the judges and clerks under the column designated "Disputed ballots," and the numbers of the ballots would be given that were placed in this disputed envelope and referred to the board. I am asking you whether or not you recall any instance at all during the entire time that you were there that the clerks at that table followed that line of procedure?—A. No; they did not put any disputed ballots in the envelope and refer them to the commissioners.

Q. Now, then, I want to direct you to this particular one for the purpose of enlightening you and see whether or not it will refresh your memory in that particular. I direct you to this sheet under the column "Disputed ballots" and the words written in red ink "Not counted."—A. I guess—I don't know what they had reference to, but——

Q. That red-ink memorandum was not made at your table at any time, was it?—A. I can't say.

Q. You never saw any red ink there, did you?—A. I don't know anything about that.

Q. They used an indelible lead pencil throughout, didn't they?—A. At the table; yes.

Q. The recount clerks?—A. Yes.

Q. You never saw them use any red ink?—A. No.

Q. So that red-ink memorandum must have been written by someone else other than the recount clerks at your table?—A. I couldn't say who wrote it.

Q. Then you want to let your answer stand that in no instance was any ballot disputed referred to the board of election commissioners from your table throughout that entire time?—A. Yes; as far as I know.

Q. Then, have I understood you correctly that no ballots from your table were referred at any time to the board of election commissioners for their determination and decision?—A. That is, the ballots; no.

Q. Now, that might have occurred and you not know anything about it, Jim?—A. Well, it could possibly have occurred, too.

Q. That is to say, you might be so engrossed with your own memorandums that you overlooked that, or did not notice it?—A. As soon as the count was over we got the straight Republican, Democratic, scratched, etc., and we would kind of glance at them, and see if there was any discrepancy between the original count and that count and then I would go right over and report to Mr. Bogy, while the men were making out their reports and sealing up the boxes, etc.

Q. Now, Jim, referring to ward 19, precinct 12, you refer there to 107 ballots; do you want to be understood as saying that it is your opinion that all 107 of those were in the same handwriting?—A. I would not say the whole 107, because I did not investigate them individually at all.

Q. In other words, that whole 107 were all of the scratched ballots in that particular precinct?—A. Yes; practically.

Q. And you don't want to be understood, then, as saying that all of them were in the same handwriting?—A. I could not take and swear that all of them were, because I did not examine them that close. I said there was a similarity in the handwriting.

Q. How many did you examine?—A. I said there was a similarity in the handwriting of practically all of them as I would have a glimpse of them as they turned them over.

Q. Do you know what part of town that precinct is located in?—A. No, sir.

Q. Do you know whether or not it is a Negro precinct?—A. I can not say.

Q. Did any of the judges there tell you it was a Negro precinct?—A. No.

Q. You did not pick out those ballots and lay them side by side and compare them, did you?—A. No.

Q. So you are not willing at this time to swear that they were all in the same handwriting?—A. No; I can't say that they were all in the same handwriting.

Q. Now, then, you made a report of that fact to Mr. Bogy, didn't you?—A. yes, sir.

Q. And you gave him the information?—A. Yes, sir.

Q. And he made a memorandum of it, did he?—A. Mr. Bogy come right over at the time and asked them not to close the box.

Q. I mean you made a report of it to Mr. Bogy at the time?—A. Yes, sir.

Q. So that Mr. Bogy had that information at that time right away?—A. Yes.

Q. And your recollection of that is that that was Saturday?—A. I think it was Saturday.

Q. And your recollection is also that it was after Mr. Dempsey made this announcement on Friday?—A. Yes.

Q. In which you say that he announced that you were not to take the numbers of scratched ballots?—A. Yes.

Q. Is that right?—A. Yes.

Q. You are reasonably certain of that, are you?—A. Yes.

Q. Now, ward 22, precinct 8, you say there was 83 Republican ballots scratched for Hawes. Have you the figures there of the recount made by the recount clerks?—A. Bogy 126 and Hawes 236 straight.

Q. I mean the total vote?—A. One hundred and thirty-one for Bogy and 334 for Hawes.

Q. One hundred and thirty-four for Bogy, isn't it?—A. One hundred and thirty-one.

Q. One-hundred and thirty-four this sheet shows made by the recount clerks?—A. Five duplicate ballots, 126 straight.

Q. Does the memorandum that you made at the time show that Bogy in the recount received 131?—A. One hundred and twenty-six straight and 5 duplicates; yes.

Q. I mean a total of 131?—A. Yes.

Q. What is the total for Hawes?—A. Three hundred and thirty-four.

Q. Have you the figures of the returns made by the judges and clerks of election?—A. No—oh, the original return?

Q. Yes.—A. One hundred and fifty-three for Bogy and 301 for Hawes.

Q. So that Hawes made a gain there of 33 votes in the recount, didn't he?—A. Practically.

Q. And Bogy lost 19?—A. Yes.

Q. Now, Mr. McCluskey, did you ever officiate at elections before as judge or clerk?—A. Some years ago.

Q. And you have taken some hand in politics before?—A. Yes.

Q. Can you explain why such a discrepancy would occur between the count of the judges and clerks of election and the recount made by the clerks in the election commissioners' office?—A. No; I can't.

Q. That is a change of 52 votes. Hawes gains 33 and Bogy loses 19. Can that be accounted for by the negligence or misconduct of the judges of election in refusing to count the ballots that were cast for Hawes?

Mr. Feigenbaum. I object to that.

A. I can't say how it happened.

Mr. Barrett. There is a mistake in the count. There was a difference between the number of ballots in the box and the return made of them. Now, then, in that ward in that particular precinct you refer to, you say there were 83 Republican ballots for Hawes. That was all scratched Republican ballots, was it?

A. Yes, sir.

Q. You don't mean to be understood as saying that the same man wrote all the names on those 83 ballots, do you?—A. Well, I can't say that the same man wrote all the names.

Q. You did not set them down side by side and scrutinize them very carefully?—A. There was a similarity of handwriting.

Q. You just took a sweeping glance at them?—A. Similarity of handwriting.

Q. I want to know what examination, if any, you made?—A. I just made an examination as we turned the ballots over.

Q. I know, but you did not take the trouble to see whether all the hooks and i's and dotting and crossing, whether they were the same?—A. No.

Q. Whether the e's and h's and s's all looked alike; you didn't go to all that trouble?—A. No; I did not examine them that thoroughly.

Q. So that is just an offhand opinion?—A. My opinion was——

Q. That is, their being similar, you just say that off-handed?—A. Yes, sir.

Q. You made a report of that to Mr. Bogy, did you?—A. Yes, sir.

Q. When, at the time?—A. Yes, sir; at the time.

Q. Did you give it to him in writing?—A. No, sir.

Q. You kept a memorandum?—A. Yes, sir.

Q. And he could have obtained it from you any time he desired?—A. He could what?

Q. He could have obtained this memorandum that you had made from you at any time—any time he desired, couldn't he?—A. Yes, sir.

Q. And that is true of the memorandum you made of the eighteenth and nineteenth ward, and all other wards; is that right?—A. Yes, sir; he could have got this information.

Q. Now, ward 26, precinct 16, you say there was one Republican ballot in which Bogy's name was scratched and Hawes's name was written in, and that afterwards it was blurred and Bogy's name was blurred; do you know whether or not that particular one was put in the disputed envelope and referred to the election commissioners, or was that ballot counted, or what was done with it?—A. They claimed it was a "No vote."

Q. Was there any record made of that?—A. I can't say if they made a record on their sheet or not.

Q. Did you take any memorandum of the number of that ballot yourself?—A. Ballot 108.

Q. So you have taken a memorandum of it?—A. Yes.

Q. I will refer you to the sheet signed by O'Reilly, Smith, Carroll, and Haas, and ask you if they have made a record of it?—A. Ballot 108; yes, sir.

Q. So that you have a memorandum of it?—A. Yes.

Q. Now, at this table in all these instances when you would report these matters, these so-called irregularities, to Bogy, he would make a memorandum of it, wouldn't he, on a sheet of paper at the time?—A. Generally.

Q. Now, then, at that table that you were situated at, you referred to one incident where there was 100 ballots that had been overlooked in the counting, and afterwards they discovered their mistake and counted them up?—A. Yes, sir.

Q. That was 100 ballots that were in a pile alongside of the box on the table?—A. What drew my attention to it was, when I began to make up my sheet and give the total number of ballots there was a discrepancy.

Q. I understand that, but you did not get my question. These ballots were right on the table there in open view, these 100 ballots, and were right together; they were to one side, alongside of the pasteboard ballot box on the tabe; that is where they found them, wasn't it?—A. Yes.

Q. In a pile together?—A. Yes; they found them in a pile together.

Q. And it was just simply an oversight on the part of the clerks thinking they had counted these ballots?—A. I think so.

Q. And in several instances they had to recount them to be sure that they were correct, didn't they?—A. One other instance they had made a mistake of two votes.

Q. Whenever there was a mistake directed to their attention by you or by anybody else at that table as to the accuracy of the count they would recount them, would they?—A. Well, I think they had quite an argument about that; I think you and Mr. Bogy had a little argument there in regard to that.

Q. Now, as to the footing or total being inaccurate, if there was anything of that character, in the two instances you called their attention to, they corrected it?—A. Yes.

Q. And you do not recall any others, do you?—A. No, sir.

Q. As far as you can see, other than what you have stated, the conduct of these four men, two Republicans and two Democrats, at work at that table, was accurate, wasn't it?—A. Yes.

Q. And fair?—A. Yes.

Q. They were not partial to either side?—A. They seemed to be honest, decent, straight fellows; I could not say a word against them.

Q. You haven't any complaint to make against them as to their conduct?—A. No, sir.

Q. Now, as to this alleged statement made by Commissioner Dempsey, your best recollection is that occurred on Friday?—A. I am pretty sure it occurred on Friday.

Q. And you are reasonably certain that it occurred before you began the count of the nineteenth ward, precinct 12?—A. I think so.

Q. Just to illustrate you, if ward 19, precinct 12, was counted on Thursday, for instance, then the statement of Commissioner Dempsey followed the count of that particular precinct?

Mr. Feigenbaum. I object to that because it is contrary to the evidence in the record. This question is based on a hypothesis that is not in accord with the testimony. The witness has testified that the nineteenth ward, twelfth precinct, was counted, to the best of his recollection, sometime Saturday, not Thursday; and it is not a fair question.

Maj. Hawes. The records of the election commissioners' office will show absolutely what date and what time each ward was counted.

Mr. Feigenbaum. That is not in the record yet. The only thing he has got in the record is that it occurred on Saturday.

Mr. Barrett. Now, then, if as a matter of fact, the recount of ward 19, precinct 12, occurred on Thursday, then you would be mistaken in saying that the recount of that ward and precinct occurred after Commissioner Dempsey's statement, wouldn't you?

A. Yes; if it happened before that. But I said, to the best of my recollection.

Q. But I say your recollection on this would be erroneous; if this particular precinct was counted on Thursday then it would precede Commissioner Dempsey's announcement.—A. Yes.

Q. And the judges and clerks necessarily would not be influenced by anything that he had said up to that time; that is correct, isn't it?

Mr. Feigenbaum. That is a pure matter of deduction.

A. I don't know.

Mr. Barrett. I say, they could not be influenced if he had made no announcement up to that time when you were making this recount.

Mr. Feigenbaum. That is a pure matter of deduction. I don't see why the witness need to answer that.

Mr. Barrett. You are not sure—did you state positively that the recount of ward 19, precinct 12, took place after Commissioner Dempsey made this announcement that you were not to take numbers of any scratched ballots?

A. What I am basing my answer on was this: I think we done three precincts Monday, or possibly three or four Monday, and that would leave 19, we counted Saturday, because I think 19 and 20—and 22, 26, and 27 was the last ones we done, and I think we done them on Monday, and I think 19 must have been on Saturday.

Q. What ones do you think you done on Monday, for instance?—A. The last ones, 27, 26, 22. I figure we done about an average of four a day. Now, we might have done five some days, and some days we might have only done three.

Q. Now, wait a minute. Let's understand each other. On Monday, which was the last day, your recollection is that you were working on ward 27 in one instance?—A. Twenty-seven.

Q. And ward 26? And ward 22?—A. Yes.

Q. And from that you reason that it must have been wards 20 and 19 on a Saturday?—A. Yes. We had 20 and 19 on a Saturday.

Q. Now, as to this statement of Commissioner Dempsey, didn't he make the announcement at the time that the challengers or watchers were not to make any record of the ballots except those that were noted on the sheets of the recount clerks which were disputed or challenged? Was that not the statement he made?—A. Not that I recollect.

Q. You don't recollect that?—A. No.

Q. And you were one of Mr. Bogy's watchers?—A. Yes, sir.

Q. And you were hired by him and paid by him?—A. Yes, sir.

Q. And your rate of compensation was what?—A. $7.50 a day.

Q. The statement, whatever it was, made by Commissioner Dempsey, was made openly and applied to all; he made the statement loud, applying it to all the tables?—A. I suppose it was to all of them. He come out and made the statement.

Q. Out loud; he made a public announcement, and rapped on the table, or some place, to attract attention and have silence, didn't he, and then made this public announcement?—A. He come out and made the announcement. Now, whether he rapped on the table or not, I can't say that.

Q. He made it out loud?—A. He made an announcement; yes.

Q. Out loud, was it?—A. Yes; out loud.

Q. So that the clerks, all of the recount clerks, and all of the watchers could hear it?—A. I guess everybody in the room could have heard him.

Q. You were about 15 or 20 feet away from him, weren't you, at the time, your table was?—A. Fifteen or 20 feet, possibly 15 feet.

Q. You heard him distinctly, didn't you?—A. Yes; if I was paying strict attention to what he said.

Q. Well, were you paying strict attention?—A. Well, I never paid any too strict attention. I turned around casually and listened to him, as an ordinary man would.

Q. Now, Jim, if I understand you rightly, you never paid much attention to these sheets?—A. No. That was the clerk's business; I didn't have nothing to do with them.

Q. You didn't pay any attention to them?—A. No.

Q. You don't know whether this sheet that I presented to you for examination is the kind used by them in making their tabulations or not?—A. The form looks the same.

Q. Looks the same. It has three columns, one marked "Total vote," one "Rejected ballot," and one "Disputed ballot." What are you doing now? What is the nature of your employment at the present time?—A. I am not employed at all at the present time.

Q. Did Mr. Bogy direct your attention to watching these memorandum sheets made by the recount clerks?—A. No, sir.

Q. He gave you no instructions on that?—A. No, sir.

Q. Did Mr. Bogy's lawyer give you any instructions about it?—A. No, sir. Mr. Bogy, the first day I come to work there, I got an introduction to him. He told me, he says, "I want you to come in here and watch the count, and watch for any irregularities that you think—what you think would be any irregularities and report them."

Q. Mr. Bogy was there every day throughout the recount, wasn't he?—A. I can't swear he was there every day.

Q. Well, his lawyer was there, Cornelius F. Bauer?—A. Yes; I would see Mr. Bauer there occasionally. I did not see him there every day.

Q. You saw him moving around the tables from one table to another?—A. Yes.

Q. And you saw Bogy moving around?—A. Yes, sir.

Q. You saw him there every day there moving around at some time or another?—A. I can't say he was there every day.

Q. To the best of your recollection?—A. To the best of my recollection he was there every day.

Q. Do you know Sol Feigenbaum, a brother of counsel for contestant?—A. No, sir. I might know him to see him if he was up in there.

Q. A clerk for one of the election commissioners in the recount at the extreme last table?—A. No; I don't know him.

Q. Have you seen him outside here?

Mr. Feigenbaum. He said he didn't know him. How could he tell you if he saw him out there. That is ridiculous.

Mr. Barrett. Did you see any man who was a clerk throughout this recount in this office to-day?

A. Now, there was only two or three men out there this morning.

Q. They were watchers?—A. I don't know what they were. I think they were watchers. I did not get acquainted with the men up there at all.

Mr Barrett. That is all.

(Signature waived by agreement.)

Mr. Feigenbaum. I want to say just a word. I have tried to adopt any suggestions of contestee in order to expedite the taking of depositions, but I have not been very successful in trying to expedite them. My direct examination lasted about 10 minutes, and a lot of immaterial matters have been gone over for an hour and 10 minutes, and I am afraid we won't get all our witnesses in, for that reason. We are doing the best we can to get all the testimony in.

Maj. Hawes. I want to state that contestant has wasted practically two whole days trying to show statements of Commissioner Dempsey, or two instructions issued by him; that Commissioner Dempsey has requested permission to state exactly what those two instructions were, which could then be quickly impeached, without cross-examination by contestee; and that two days of time has practically been wasted discussing two instructions, in the form of impeachment. All of this time could have been saved by summoning Commissioner Dempsey.

Mr. Feigenbaum. Let me say now that we have already indicated our willingness to permit Commissioner Dempsey to testify, since he seems anxious to do so, and to oblige contestee in that respect, since contestee also insists upon giving him the opportunity to testify; and it is our intention to do so, if permitted to proceed with our depositions, to half complete them in the time allotted to us.

But if contestee, for whatever purpose, continues to draw out in cross-examination questions on immaterial matters and consumes five-sixths of the time of each witness who is sworn we fear we may not be able to take the deposition, not only of Commissioner Dempsey, but of many others whose depositions should be taken.

Maj. HAWES. Contestee states now that he is willing to take depositions in the evening, and every evening, and continue all the time, and if contestant desires to take depositions at other points, contestee will be very glad to appear at one or ten different points in the city of St. Louis in order to give him time to take his depositions, and we will appear any evening and every evening at his service.

Mr. FEIGENBAUM. I want to ask now of contestee if beginning to-morrow morning he will consent to take depositions at two different places at the same time, without further notice, because our time is short and we are unable to give a full notice, as provided by law.

Maj. HAWES. I do, provided we can agree upon the notary who is to take these depositions. If the notary is satisfactory to us, and if you will give me the name of the notary now we will either have another notary here, or we will agree to the notary whom you may select.

Mr. FEIGENBAUM. If it is agreeable, we will undertake to name the notary before the day is over.

Mr. BOGY. I want to suggest that we start in with this witness that is now waiting to give his deposition, because it is absolutely necessary that we get in a small part of the testimony that we want to have produced.

The NOTARY. All right. The notary has always been anxious to swear the witness.

STANLEY J. KOZLICKA, a witness of lawful age, being produced, sworn, and examined on the part of the contestant, deposeth and saith:

Direct examination by Mr. FEIGENBAUM:

Q. State your name.—A. Stanley J. Kozlicka.

Q. Mr. Kozlicka, where do you reside?—A. No. 1405 North Twelfth.

Q. What precinct and ward is that in?—A. Fourth ward, seventh precinct.

Q. What congressional district?—A. The eleventh.

Q. Mr. Kozlicka, on November 2, 1920, at the last general election were you around the polling place of the precinct and ward you have just named the greater part of the time?—A. Yes, sir.

Q. And in what capacity?—A. I was challenger and watcher there, commissioned.

Q. Commissioned challenger and watcher?—A. Yes.

Q. I think you said fourth ward, seventh precinct?—A. Yes.

Q. For what party?—A. Republican Party.

Q. Mr. Kozlicka, tell us in your own way how the election was directed in that precinct, and what, if anything, unusual you noticed there that day.—A. Well, to my knowledge, I didn't notice very much, outside of a man come in and ask for a—of course, in the first place, they were dishing out two ballots. When a man come in they would ask him whether he wanted a Republican or Democratic ballot, and if he asked for a Republican ballot, "You are not going to vote for that nigger on that ballot." That's all I know.

Q. Who said that to them?—A. I would not state that.

Q. But was it one of the Democratic officials, without asking for his name, will you tell us?—A. Yes.

Q. One of the Democratic officials. By officials I mean either judge or clerk?—A. Yes.

Q. And was that remark directed to the voter?—A. To the voter; yes, sir.

Q. Can you give us an idea as to how long that continued during the day?

Mr. BARRETT. Of course, I am objecting to that because it is not shown here that there was a Negro running for Congress in that district.

Mr. FEIGENBAUM. No; we do not so contend.

Mr. BARRETT. Then I object to it as being wholly immaterial to the issues involved in this case; it does not involve the office in contest.

Mr. FEIGENBAUM. I think it will affect the office involved in this contest. Read that question, please.

(Last question read as follows:)

"Can you give us an idea as to how long that continued during the day?"

A. Practically all day, I think.

Q. And was that remark directed toward every voter who would come in?—A. No.

Q. How many approximately of the entire number? Would half of them be so accosted, or three-fourths of them, or how many, in your opinion?—A. That is a question. What do you mean, Republican voters or Democratic voters?

Q. Republican voters, of course.—A. Well, I can't say; maybe 25 or 20, something like that.

Q. Twenty or twenty-five Republican voters?—A. Yes; 20 or 25.

Q. Was any such remark made to Democratic voters when they asked for a Democratic ticket?—A. None whatever.

Q. None whatever. As Republican challenger and watcher, did you protest against that practice at any time?—A. Well, I did and I didn't.

Q. When did you and when did you not?—A. In the first place, it would not do any good to protest.

Q. Why?—A. Well, I would not say.

Q. Did you fear violence?

Mr. Barrett. Wait a minute.

A. No; not exactly.

Mr. Barrett. Wait a minute.

Mr. Feigenbaum. That may be stricken out. I do not want to embarrass the witness.

Q. Were you threatened on that day?—A. I was threatened; yes.

Q. By some Democratic officials?

Mr. Barrett. Now, wait a minute. I want to protest against that conduct throughout.

Mr. Feigenbaum. The witness has already indicated he does not want to give the name, for personal reasons.

Mr. Barrett. Don't be putting the answers in the witness's mouth.

Mr. Feigenbaum. I am not putting the answers in the witness's mouth.

Q. Do you care to give the name of the individual who threatened you?—A. No, sir; I would not state any name.

Q. Will you tell us whether or not he was an official?—A. Yes, sir.

Q. He was, you say?—A. Yes, sir.

Q. And will you tell us what party he belonged to?—A. Democratic Party.

Q. Did you notice anything else unusual occurring there?—A. No; I don't think there was anything else there.

Q. You were the only Republican watcher in there?—A. Yes, sir.

Q. Are there many colored voters in that precinct?—A. About 20, I guess, or maybe 22.

Mr. Feigenbaum. That is all.

Cross-examination by Maj. Hawes:

Q. The reference to a Negro was to a Republican Negro candidate for the legislature?—A. Yes, sir.

Q. And there is only a few precincts, or only a part of the ward in that legislative district; the balance of that legislative district is in the twelfth congressional district and not in the eleventh?—A. Yes, sir.

Q. And the references there were undoubtedly made to the Negro who was a candidate in this legislative district?—A. Yes, sir.

Q. Now, are you not aware of the fact that but a few precincts in the entire eleventh district are in that particular legislative district? Do I make myself clear?—A. You mean in the entire eleventh congressional district?

Q. Yes, sir.—A. Now, I can't state that. I am not so well versed on that.

Q. Well, let me explain——A. I know what you mean.

Q. The eleventh congressional district consists of nine wards and parts of wards; the twelfth congressional district consists of a certain number of wards, which I do not know; and this legislative district, only a small portion of it is in the eleventh district, and the greater portion of it is in the twelfth district; is that it?—A. I am not familiar with that.

Q. Well, so far as you know, the Negro question was only in those two precincts in the fourth ward, which were in that particular legislative district?—A. I can't answer for the other precincts. I am stating what I know about that one particular precinct. I can not say about any other precinct.

Q. But as a challenger for the Republican Party you must know that only a small portion of that legislative district is in the eleventh congressional district, that the large proportion is in the twelfth congressional district?—A. That may be; I don't know.

Q. Were there any disturbances outside of the polls that day?—A. No, sir.

Q. Any fights?—A. No, sir; not that I know of.

Q. That is the only thing you have to complain of, was it?—A. Yes, sir.

Q. That is the only thing that came under you observation?—A. Yes, sir.

Q. As far as you know there was a square count and the rest of it was all right?—A. As far as I know everything was O. K. outside of this little article there.

Maj. Hawes. That is all.

(Signature waived by agreement.)

M. J. EDWARD HARTMANN, a witness of lawful age, being produced, sworn, and examined on the part of the contestant, deposeth and saith:

Direct examination by Mr. Feigenbaum:

Q. Will you please state your name?—A. M. J. Edward Hartmann.

Q. Where do you reside, Mr. Hartmann?—A. No. 1400 Euclid Avenue.

Q. What is your occupation?—A. My occupation?

Q. Yes, sir.—A. General business.

Q. Do you do clerical work?—A. Do clerical work?

Q. You don't really do very much work, do you?—A. Sometimes, and sometimes not.

Q. On the 12th day of this month were you employed as a watcher by Mr. Bogy during the recount?—A. Yes, sir.

Q. In the Bogy-Hawes contest in the election commissioner's office?—A. Yes, sir.

Q. Now, can you tell us what table you were stationed at, if you remember?—A. Yes; I remember the place; but I can not tell you the——

Q. The number?—A. It is on the south side, the first one in the other room.

Q. The first one in the large room?—A. No.

Q. In the small room?—A. In the small room.

Q. When you refer, then, to the small room, you mean simply the wing of the large room; it is all one large room?—A. Yes.

Q. Now, were you there the first day of the recount, when Judge Arnold, as chairman of the board of election commissioners, read some instructions?—A. Yes.

Q. Now, did you hear any statements or instructions given by Mr. Dempsey, Commissioner Dempsey, during the week of the recount?—A. Yes, sir.

Q. When, what day did you hear the first instruction given by Mr. Dempsey?—A. On Wednesday morning.

Q. On Wednesday morning?—A. On the 12th. I think it was on Wednesday morning.

Q. The 12th was the first day of the recount?—A. Yes.

Q. And you heard Mr. Dempsey make a statement then?—A. Yes.

Q. And to what effect was that statement?—A. He made a statement to the judges and clerks in general, and to the watchers, defining their duty, what they had to do, and so on.

Q. Is that Mr. Dempsey or Judge Arnold you refer to?—A. Judge Arnold made that statement before that, but you asked me about Mr. Dempsey.

Mr. Barrett. Was this on Wednesday?—A. On Wednesday.

Q. On Wednesday; was that Arnold?—A. No; I didn't say Arnold. He asked me whether Mr. Dempsey——

Q. When did Dempsey make this statement?

Mr. Feigenbaum. It is Wednesday, he says.

A. Right after—I am talking about Mr. Dempsey.

Q. You say that was right after Mr. Arnold made a statement?—A. I can't exactly say which time elapsed, but Mr. Arnold's rule was given there, and Mr. Dempsey then come in later on.

Q. Were both statements to the same effect, or were there any new instructions given by Mr. Dempsey?—A. Mr. Dempsey came and stated that we were not to take any notes of ballots. I know that.

Q. Now, was that on Wednesday that he made that statement?—A. That was on Wednesday; that is, to the best of my knowledge.

Q. Now, on Friday, which was the third day of recount, did you hear Mr. Dempsey make any further statement, or any further instructions to the judges, clerks, or watchers, on Friday morning?—A. On Friday morning—I don't know whether it was Friday, but I heard him subsequently made another statement, and he talked more to the clerks in the large room, and I was busy watching what was going on at my table; I didn't hear it so exactly.

Q. So you don't know what the next statement was by Mr. Dempsey, or did not hear it?—A. I did not hear it all, you know. I heard some, and I asked some of the judges on my table.

Q. Did you hear any part of it that you could tell us now, that you could recall? What you do not recall yourself as having heard, don't state.—A. I think it was to the effect that some of them have been checking numbers of ballots, which we were counting on the table.

Q. And what else?—A. And that they were not to do it: that is what I understood.

Q. Did you hear anything said about scratched ballots?—A. About any ballots?

Q. You were not permitted to take the numbers of any ballots?—A. No ballots.

Q. Did you hear Mr. Dempsey make any other statement as to what judges, clerks, or watchers should do, and what their duties were?—A. I did not pay much attention any more what Mr. Dempsey said for the simple reason that when the first statement was made I did not see what the recount would benefit Mr. Bogy.

Q. Why do you say you could not see why it would benefit Mr. Bogy? In what way do you mean? I want your explanation of that.—A. Because, as far as I understood, the recounting was to find out whether there was any fraud committed, and fraud could not be detected if the scratched ballots could not be taken, the numbers be taken and looked up and found out from the ones that scratched their ballots, whether the name of Mr. Bogy was scratched, and the name of some other candidate substituted.

Maj. Hawes. I object to this answer because the question related to an instruction given by the commissioner, and this does not relate to it, but must have been a private statement, if made at all, and is merely an opinion of the witness; and it is not responsive to the question propounded to him by counsel.

The Notary. All right; proceed.

Mr. Feigenbaum. Mr. Hartmann, did you hear any statement by Mr. Depmsey, directed to any other table—any particular table—as to what the judges were to look for and what they weren't to look for? If any such statement was made, did you hear it? If you did not, say so.—A. No; I do not know of any particular statement outside——

Q. Of what you have related?—A. Of what I have related.

Q. Well, I didn't know whether you did or not, and I wanted to learn that. Did you undertake to take any numbers of any scratched ballots for the purpose of ascertaining the similarity of handwriting between the name Harry B. Hawes being written in in large groups of ballots in any one precinct?—A. Yes, sir.

Q. And were you permitted to do so throughout the recount?—A. No, sir.

Q. When were you stopped from doing so?—A. I don't know who stopped me, but all at once Mr. Dempsey came in and protested about it. It seems that somewhere he got wind of it, and then I had a talk with Mr. Barrett, and we had a few explanations, and I told Mr. Barrett don't get excited, because he knows that scheme just as well as I. I didn't see no reason to recount if we couldn't get a record of these ballots which had been scratched.

Q. When was that that Mr. Dempsey protested against your taking any numbers of scratched ballots?—A. Twice, as I know of.

Q. When was the first time?—A. I am not sure whether it was——

Q. How long after the beginning of the recount? That is what I want to get at.—A. I think it was the second day.

Q. The second day of the recount. And thereafter did you keep any further track?—A. No.

Q. You understood that you were not to act under the instructions of the board of election commissioners?—A. I took some notes, some numbers of ballots, which were scratched, which looked to me as not being scratched with the same pencil, and the handwriting of some ballots which were scratched seemed in the same handwriting. That was enough for me.

Q. That was before Mr. Dempsey had given you instructions not to make them?—A. That was before and after.

Q. You took some after?—A. Yes.

Q. Did you continue to take all that you saw after the instructions were given?—A. No.

Q. Just took a few?—A. Just took a few.

Q. Now, Mr. Hartmann, did you see any ballot box brought into the large room where they were to be recounted open before they were brought in?—A. There was one come to our table.

Q. There was one came to your table. When it was placed on your table was the seal intact, or was it broken?—A. The party which brought the box to the table called the attention of the judges that the seal was broken.

Q. Who was this party?—A. I can't say exactly whether it was Mr. Claudius or the——

The NOTARY. Mr. Stansbury?

A. Stansbury; but I had my back turned at the moment, and I heard the judges made that remark, and the box was placed on the table for investigation of the judges and clerks. And I looked at it, and each one investigated it, and I investigated it myself.

Mr. FEIGENBAUM. Now, was the seal broken, or was it off altogether? That is, I mean was it broken at any particular place, or was it loose?

A. No; it was broken where the box come together, and it looked to me like if a man went with the hand, with the finger through, because the paper was all bent and out of shape.

Q. And the seal was torn through?—A. Torn through; that is the way it looked to me.

Q. On one side or both sides?—A. On one side.

Q. Now, when that is done can you lift the lid off?—A. Sure.

Q. Of course, you don't know how happened that or how it became opened?—A. No.

Q. Mr. Hartmann, you were around that office during the recount, I think you said, the entire period?—A. Yes, sir.

Q. Tell us from your personal observation, did you see any favoritism shown either contestee or contestant, or their watchers, by the election commissioners or any of their deputies?

Maj. HAWES. I object to that question unless he states the specific instance and facts connected with said conduct.

Mr. BARRETT. And it is objected to as calling for a conclusion, too, and leading. Let him state the facts.

Mr. FEIGENBAUM. I am asking him that general question, and then we will go into it in more detail.

The WITNESS. What was that question?

(Last question read as follows:)

"Tell us from your personal observation, did you see any favoritism shown either contestee or contestant, or their watchers, by the election commissioners or any of their deputies"?

A. It looked to me at one time——

Maj. HAWES. I object unless he states the exact incident and not his conclusions or opinions.

Mr. FEIGENBAUM. Go ahead and give first your opinion and then the facts on which you base it.

A. It looked to me after we received the instructions that we only have a right to examine and look at the ballots as watchers that it was an impossibility for the watchers to see every ballot, whether it was straight or scratched, and one of the judges, after everything was settled and put down in the memorandum of the judges or clerks, whatever they were, that party by the name of Demuth called for a pack of ballots which Mr. Harrison—I think he was a judge or clerk—counted, and he took the pack of ballots in front of them and went through them and threw to Mr. Harrison, I think, three or four or five ballots, right to him, which were scratched, and which Mr. Harrison counted as scratched ballots.

Q. The sheets that were kept by the judges and clerks in this form, that seems to have been used there at—is this one of the forms, or a copy of one of the forms used by this particular table? I call your attention to the names of the judges and clerks, Leahy and Walsh, Democrats; Demuth and Harrison, Republicans?—A. Yes, sir.

Q. I will ask you if that shows any separate tabulation of the straight votes and scratched votes—A. As far as I could understand, as the count was between Mr. Hawes and Mr. Bogy, all the scratched ballots voting for Mr. Hawes were counted in the total and put down.

Q. There is no indication there of any separate tabulation of scratched ballots separate from the straight ballots?—A. No.

Q. Now, was that the general practice at that table where you were watching?—A. That was the general practice.

Q. Now, Mr. Hartmann, I am going to ask you to tell us in your own way what else, if anything, you noticed during the five days as to irregularities around the office, or any attempt that may have been made, if such an attempt was made, to interfere with Mr. Bogy or his watchers from getting any data or memoranda?

Mr. BARRETT. There you go again, suggesting the answer to the witness.

A. I heard the different tables, that there were commotions right in that wing of the room where I was, and also on the inside, but I was more busy to watch my ballots at my table than the other one. As to myself, I didn't think it amounted to nothing, the recount.

Mr. FEIGENBAUM. What do you refer to as "it"?

A. The recount; it didn't amount to anything.

Q. What do you mean it didn't amount to anything?—A. That it was an impossibility to detect fraud if we were not permitted, you know, to take the number of the ballots and investigate them thoroughly.

Q. Were you permitted to examine the scratched ballots for comparison of similarity of handwriting between different bollots in the same precinct?—A. I was permitted to look at them, and the minute I looked at one they put the other one on [illustrating], no comparison was allowed on my table.

Q. Did the Republican judges and clerks or those judges and clerks appointed by the election board as Republicans make any protest at this practice?—A. No; not that I heard.

Q. I am referring to your table. Did everything seem to work harmoniously at your table?—A. I only had one talk with Mr. Demuth in regard to the counting, and he stated to me also that this amounts to—this recount didn't amount to anything at all the way it is counted. You can't detect anything at all.

Q. Were you present when Mr. Bogy attempted to look at some of the names Harry B. Hawes written in on scratched Republican ballots?—A. Yes.

Q. Was he permitted to do so?—A. No, sir.

Q. Who refused to let him look at them?—A. The judges.

Q. The judges and clerks worked together all right?—A. It seemed so.

Mr. BARRETT. Oh, well now, your insinuations—don't work that too far.

Mr. FEIGENBAUM. Must I limit myself?

Mr. BARRETT. I submit you should ask questions, and the witness should state facts.

Mr. CUMMINGS. And not to so persistently forget these witnesses are your own witnesses.

Mr. BOGY. May I ask a question?

Mr. FEIGENBAUM. Go ahead.

Mr. BOGY. You remember, or do you remember, of my going to the table and saying that some one had told me about a number of scratched ballots there that looked very much alike and asking for the privilege of looking at them and they refused to let me do it?

A. Yes, sir.

Q. And I said, "Just let me glance over them, I don't want them in my hand; just put one after the other so I can glance through them," and they refused me permission to do so?—A. Yes, sir.

Maj. HAWES. That is not leading the witness. I suppose the committee will understand that. They are not leading questions at all.

Mr. FEIGENBAUM. We admit they are leading; we don't deny it. I think we have been leading, and there have been no objections made on our part in similar questions. While I understand the right of cross-examination permits one to lead a witness, numerous statements have been made during the cross-examination.

Maj. HAWES. The contestant makes a long statement, and asks the witness, who is in his employ, or has been in his employ for a long time, yes or no.

Mr. BOGY. I wish to state that Mr. Hartmann is not in my employ.

Mr. FEIGENBAUM. Ask him.

Mr. BOGY. Are you in my employ, Mr. Hartmann?

A. No, sir.

Q. Were you ever in any capacity in my employ except as a watcher at that recount?—A. No, sir.

Q. Did you and I ever have any business relations of any sort, kind or description with one another at any time?—A. No, sir.

Q. Did I ever pay you any money, or promise to pay you any money for anything at all at any time excepting as may be the amount of the recount, or what would be coming to you as a watcher?—A. No, sir.

Mr. FEIGENBAUM. Did you hear any protest made by Mr. Bogy to Commissioner Dempsey as to permission not having been granted to him to look at any ballots?

A. Yes.

Q. And did you hear what Mr. Dempsey said?—A. I heard Mr. Bogy remonstrating with Mr. Dempsey that it didn't do him any good, as I understand, to have his ballots recounted if he could not take any notes of the ballots which are in doubt.

Q. What did Mr. Dempsey say, anything?—A. Mr. Dempsey went in his office, and I did not hear anything he said.

Q. Do you remember Mr. Dempsey saying that he recalled an understanding that Mr. Bogy would be given an opportunity to study scratched ballots, and permit photographing, if so desired, by Mr. Bogy?

Maj. HAWES. This is another leading question indicating exactly what answer you want the witness to make.

Mr. FEIGENBAUM. I will withdraw that question.

Maj. HAWES. Of course, he can tell it to you now. You have given him his lead.

Mr. FEIGENBAUM. Mr. Hartmann, did you hear any statement at all by Mr. Dempsey with reference to his understanding of what Mr. Bogy might do or might not do in the comparison of handwriting of scratched ballots or photographing them?

A. I heard them talking about photographing scratched ballots, and I heard Mr. Dempsey—or was it Mr.—yes, I think it was Mr. Dempsey, state that he can get them all.

Q. Do you recall when that was?—A. I think it was the second day.

Q. The second day of the recount?—A. Yes.

Mr. FEIGENBAUM. That is all.

Cross-examination by Mr. BARRETT:

Q. What is your present occupation, Mr. Hartmann?—A. My personal occupation?

Q. Your present occupation?—A. My present occupation—I am now organizing a home building association.

Q. That is, you are promoting a plan of a home building organization?—A. Yes.

Q. How long have you been so engaged?—A. Oh, for about four or five weeks.

Q. Were you so engaged during the course of this recount?—A. Yes, sir.

Q. What was your occupation prior to that time?—A. I had many occupations.

Q. How?—A. I had many occupations.

Q. Well, just state a few of them?—A. I was in the insurance business; I was in the real estate business; was in the sheriff's office, and in the excise office.

Q. These positions that you held in the sheriff's office and the excise office were as a Democrat, appointed by a Democrat, under Democratic administration?—A. Yes, sir.

Q. And the last campaign you were a representative of the Farmer-Workers' Party?—A. Yes, sir.

Q. And supported it?—A. Yes, sir.

Q. How many years were you in the sheriff's office?—A. Four years.

Q. How many years in the excise commissioner's office?—A. Four years.

Q. Four years; that is eight years. Did you hold any other public office?—A. No.

Q. Those eight years were all under Democratic administration?—A. Yes.

Q. This last campaign you were in the Farmer-Workers' Party?—A. Interested in the Farmer-Workers' Party; yes, sir.

Q. Now, did you hold any other office other than those two you have designated under the Democratic Party?—A. No, sir.

Q. Now, to what extent were you interested in the last campaign in the election of the Farmer-Workers' ticket?—A. To what extent was I interested?

Q. Yes.—A. I was interested because I was in the convention.

Q. You were a delegate to it?—A. Yes.

Q. And you worked for the election of the entire Farmer-Workers' ticket?—A. I worked for the election of the entire Farmer-Workers' ticket, naturally.

Q. Yes. In the twenty-seventh ward, or in the whole city?—A. Anywhere.

Q. Were you a member of that political party's committee?—A. Not at that time.

Q. Are you now?—A. Now I am.

Q. When were you elected such a member?—A. In the latter part of November last year, or beginning of December.

Q. After the election?—A. Yes.

Q. Before that time you took an active part in electing the candidates on that ticket, including congressmen in the eleventh district?—A. Yes.

Q. Who was your candidate for Congress in the eleventh district?—A. Allen.

Q. And you took an active part in Mr. Allen's behalf throughout the entire eleventh district?—A. Yes; naturally.

Q. Now, after the election you became interested in Mr. Bogy's contest, didn't you?—A. Not a bit of it.

Q. How?—A. Not a bit of it, except, if you want to let me go ahead, you know, and tell the whole story. After the election was over and we had the official count we were—a committee of the "Forty-eighters," or what we call the Farmer-Labor Party—had a meeting, and we were talking about the results, and we were not satisfied with the results, and there is where I heard the first time that there was mumbling about some crookedness which happened to go on in the election.

Q. Now, this rumbling——

Mr. Feigenbaum. Let him go ahead. He is going to state how he became interested.

Mr. Barrett. Let him go ahead, but don't charge it up to my cross-examination.

Mr. Feigenbaum. I don't care if you want to stop him, but suit yourself about that.

Mr. Barrett. It takes up too much time.

Q. You became interested in Mr. Bogy's contest after the election?—A. Yes; after the election, naturally.

Q. How soon after the election?—A. After this committee of the "Forty-eighters," or Farmer-Labor Party, what we called, began to mumble that crookedness was going on in the election.

Q. Well, when was that?—A. That was about two weeks after the election.

Q. Two weeks after the election?—A. Yes.

Q. And from that time on, then, you took an interest in Mr. Bogy's contest?—A. I heard, then, that Mr. Bogy was going to contest this case, and I stated that to the Farmer-Labor Party committee and said, "Here is a chance, if there is going to be a contest, you fellows can go in and find out whether you fellows have been robbed of your votes."

Q. Then there was an understanding then at that time that you would go into Bogy's contest and find out if the members of the Farmer-Workers' Party had been robbed of their votes in this recount that would follow in the Bogy-Hawes contest; is that it?—A. More in the interest of the Farmer-Labor.

Q. Yes; more in the interest of the Farmer-Labor; and that was the object you had in mind when you became interested in Mr. Bogy's contest; is that it?—A. Yes.

Q. Now, about when did you begin to take such interest?—A. When I heard the members of the third ward Farmer-Labor Party Club made statements that crookedness was going on in the polls.

Q. I see. When was that, though?—A. That was, as I stated before, about two weeks after the election.

Q. Two weeks after the election. Did you go to see Mr. Bogy yourself?—A. No, sir.

Q. How did you and Mr. Bogy arrange for your taking an interest in his contest?—A. I really don't know how it come about.

Q. You just naturally came together?—A. I don't know how it come about.

Q. Where did you meet in the first instance?—A. In the first instance, well, you know, was at—I think it was Mrs. Caulfield's home.

Q. Mrs. Caulfield's home?—A. Yes.

Q. Mrs. Caulfield is a cousin of Bernard P. Bogy?—A. Well, I don't know that.

Q. Well, you know she is a relative, don't you?—A. I heard that she is, but I don't know that.

Q. Yes; you have heard that. And she was assisting him in this recount as a watcher, wasn't she?—A. She was assisting?

Q. She was one of his watchers during the recount?—A. Oh, she was up there; yes.

Q. When did that meeting take place at Mrs. Caulfield's home?—A. I don't know the date.

Q. Can't you give us some idea of how long before the recount was begun?—A. I know there is where I got acquainted with Mr. Bogy.

Q. Now, with respect to the date of the election, November 2, how long after November 2 did this meeting take place?—A. I told you two weeks; between two and three weeks afterwards.

Q. Two or three weeks after the election. At that time had Mr. Bogy filed his notice of contest?—A. He told me that he was going to contest.

Q. He told you that he was going to file it. How did you come to go to Mrs. Caulfield's home?—A. How I come to go to Mrs. Caulfield's home?

Q. Yes. Did you go there of your own volition?—A. No; I met Mrs. Caulfield on the street and she talked to me about it.

Q. Did she introduce herself to you?—A. No. She knows me. She knows me for, I don't know how long. I know her, you know.

Q. Then you went to her home at her invitation? Is that the way?—A. Yes.

Q. Then you had the talk with Mr. Bogy on that occasion?—A. Yes, sir; that is the way it come about.

Q. Anybody else there?—A. There was another lady there.

Q. What was her name?—A. Mrs. Rozelle was there.

Q. Mrs. Rozelle?—A. Yes.

Q. Do you know what her first name is and where she lives?—A. She lives with Mrs. Caulfield.

Q. Anybody else present on that occasion?—A. No.

Q. At that time did you urge Bogy to make a contest?—A. No, sir.

Q. You didn't. Did you at any time urge Bogy to make a contest?—A. No.

Q. Now, you went around the eleventh district, and particularly around the third and fourth wards, and made inquiries as to the conduct of the election, didn't you, and the eighteenth and nineteenth wards? Didn't you go around there and visit people?—A. I wasn't in the eighteenth and nineteenth wards. I wasn't anywhere else except at the headquarters of the third ward Farmer-Labor Party.

Q. That is the only ward you went into, but in that ward you went in there and interested people, didn't you?—A. No. I told them what I heard from Mr. Bogy, that he is going to contest, and I heard them talking about the crookedness. I told them if they think there is crookedness, go and dig it out and report it to Mr. Bogy.

Q. Didn't you interview Jim Salzer and get him to come here and testify as a witness?—A. Mr. Salzer is one of the committee.

Q. Didn't you interview Salzer?—A. I didn't interview anybody in particular.

Q. You never said anything to Salzer about it?—A. I spoke to Salzer, and I spoke to Allen, and I have spoke to 20 or 30 different people about it.

Q. Wasn't there four members of the Farmer-Labor Party committee within the eleventh district, four committeemen or challengers, for the Farmer-Labor Party, and didn't you see those people and get them interested, and get all of them to come up here that have already testified in this case?—A. I don't know.

Q. You don't know. You don't recall having done it?—A. No, sir.

Q. Do you remember bringing one to this office?—A. No, sir.

Q. Now, did you talk to any one of these gentlemen, Messrs. Rhodes, Salzer, or Roldter? Did you talk to any of those gentlemen about this contest?—A. I know Salzer personally, and I know Allen personally, and I know some of them by their faces, but not by their name.

Q. Well, did you ask any of these gentlemen to come up here, interview them and ask them to come up here and testify as a witness?—A. No.

Q. Did you ask any gentleman or interview any man and ask him to come up here and testify as a witness?—A. No, sir.

Q. Now, did you take any interest in this case other than as a watcher, this contest case, other than as a watcher?—A. No.

Q. How many times have you conferred with Mr. Bogy on this contest, or about the contest, before it was filed?—A. I don't know.

Q. Well, you had a number of interviews with Mr. Bogy before his contest was instituted?—A. Why, when we meet we talk about it; that is all.

Q. Well, his notice of contest was served on contestee December 19. You say your first meeting with Bogy was two or three weeks after the election. How many other conferences or interviews did you have with Bogy between the two or three weeks after the election and December 19?—A. I can't tell you that.

Q. You had a number?—A. I have not taken any note of that.

Q. You had a number of them, didn't you?—A. No.

Q. Did you have any?—A. Yes. When we meet, you know, we talk perhaps.

Q. How often would you meet, once a week, twice a week, every two weeks, or what? Give us some approximate idea.—A. Only here lately that I met him practically, you know, every other day or so, sometimes every day.

Q. I am speaking now of the time between two weeks after the election and December 19, how often did you talk to him or confer with him about this contest?—A. I don't think twice.

Q. Twice altogether. Now, after December 19, how often had you conferred with him up to the time the recount began?—A. When we meet.

Q. Well, how often would that be, once a day, once a week?—A. Not once a week.

Q. Would it be once a week?—A. Here since the recount, there is where I saw him almost every day.

Q. I understand that, but we haven't gotten to that point yet. I mean between December 19 and January 11, when the recount was taken up?—A. I don't think I saw him three times.

Q. And then after the recount—after January 11 until the recount was completed—you saw him every day?—A. Almost every day.

Q. Every day you saw him, didn't you? You were there every day beginning January 11?—A. The 11th; yes. During those days I saw him every day.

Q. Yes; you saw him every day. And since then how often have you seen him?—A. Well, since——

Q. Since the recount was concluded up there?—A. Since you are taking depositions here.

Q. You have seen him every day since we have been taking depositions?—A. Yes.

Q. And you have been conferring and advising with him, haven't you?—A. No, sir.

Q. Never said anything to him?—A. No, sir.

Q. Never said anything to him about the witnesses?—A. No, sir.

Q. Never said anything to him about how the recount was conducted?—A. No, sir.

Q. Never said anything to him about what notations you made during the progress of the recount?—A. No. I didn't make any notations.

Q. I see. You made no notations at all during the recount?—A. No, sir; absolutely.

Q. Bogy was there every day, wasn't he, himself, during the recount?—A. He was there every day?

Q. I am asking you: did you say yes? What is your answer?—A. He was there every day.

Q. Now, Cornelius Bauer was up there also, wasn't he?—A. Cornelius Bauer was there; yes.

Q. And did you also see Mr. Feigenbaum's brother, Sol Feigenbaum, on the recount, one of the clerks there?—A. I saw him there, but I didn't know who it was.

Q. But you know there was Feigenbaum there on the recount, one of the clerks employed by the election commissioner?—A. I think the third day I found out his name.

Q. And you saw him there in that same office after the recount had been completed, didn't you?—A. Yes.

Q. And he was just standing around there, not employed at that time by the election commissioners, was he?—A. I don't know.

Q. Well, he wasn't working; he had his hat and coat on, didn't he, an overcoat and hat on?—A. I didn't pay any attention to that.

Q. You have seen him around in this office—in the outer office—since the depositions began, haven't you?—A. Yes, sir.

Q. And he is a brother of J. M. Feigenbaum, who is now of counsel for contestant?—A. That is what I understand.

Q. There is also another Mr. Feigenbaum, a lawyer that appeared up there one day and stated that he represented Mr. Bogy; isn't that right?—A. He was up there and stated that he represented Mr. Bogy—I don't know.

Mr. FEIGENBAUM. No; he didn't do that, Barrett. My brother wasn't up here saying he represented Mr. Bogy.

Mr. BARRETT. I beg your pardon. That man that came in the doorway here——

Mr. FEIGENBAUM. Not while the contest was on.

Mr. BARRETT. He said he was Mr. Bogy's counsel, and Mr. Hawes said he had to be sworn, just like the rest of them.

Mr. FEIGENBAUM. That was the last day of the recount?

Mr. BARRETT. I don't know whether it was Saturday or Monday, but he was there just the same.

Mr. FEIGENBAUM. Don't put all this down. There is no question but that he was of counsel for the contestant.

Mr. BARRETT. Now, you were seated at a table at which Messrs. Walsh and Leahy were the Democratic recount clerks and Messrs. Harrison and Demuth were the Republican recount clerks; is that right?

A. I don't know that; I don't know which one was judges or clerks.

Q. They were neither clerks nor judges; they are all deputy election commissioners.—A. Those four men were there, as far as I know.

Q. That is, Walsh, Leahy, Harrison, and Demuth?—A. Yes.

Q. And they had forms on which to make the notations of the recount in each precinct as it went along, and that form was furnished by the election commissioners; is that right?—A. Yes.

Q. And there were three columns, one providing for the recording of the total vote cast for either candidate, another one providing for the rejected ballots cast for either candidate, and the third column for disputed ballots for either candidate; isn't that right?—A. Yes.

Q. And it was understood and agreed that if there was any dispute about the validity of any ballot, it would be placed in the disputed envelope and a notation made on the sheet by the clerks, and it would be reported to the board of election commissioners for a decision; is that right?—A. Yes.

Q. And there was a set of instructions read out loud by the board through its chairman, Mr. Arnold?—A. Yes.

Q. Ten in number. And amongst others, this instruction was read, known as No. 8 [reading]: "If there is any doubt whether any ballot has been properly marked, the clerk shall place that ballot in the envelope for the decision of the board of election commissioners. Also place in this envelope all ballots that have no corresponding number on the poll books, and those that have duplicates, duplicate numbers. Also all other disputed ballots." You heard such an instruction read?—A. I heard something like that.

Q. And you also heard this instruction read [reading]: "Ballots with no initials, or with only one initial on the back thereof, shall be counted as legal ballots if numbered." You heard that instruction read also, didn't you?—A. I presume they were read. Those instructions were for the judges and clerks. They had no reference to the watchers, so I didn't pay much attention to them.

Q. Now, then, at Mr. Bogy's suggestion, these sheets which were to be made up by the election recount clerks had a provision in them for tabulating the number of ballots with one initial, or the ballots having no initial, for Bogy, and the ballots containing only one initial, or no initial, for Hawes. There was a form for writing such information in, isn't there, and that was done at the suggeston of Mr. Bogy, wasn't it?—A. I don't know at whose suggestion.

Q. You were present there that morning?—A. I don't know about that.

Q. And you don't know much about the manner of making up this form, do you?—A. I looked how they made it up, and I figured up myself, and read it off, and looked at it, and it tallied.

Q. Now, there was no provision, as you understand it, for recording the straight votes separate from the scratched votes for either candidate, was there?—A. Yes; there was such a one.

Q. Where is it?—A. I saw the judges doing it.

Q. I mean is there any provision on these sheets anywhere—take at the table that you were seated at—now, wait a minute. Is he looking at sheets other than at the table he was seated at? If he is, I want to know it.

Mr. FEIGENBAUM. I don't know what table he was seated at.

The WITNESS. This is not mine [indicating], and this is not mine either.

Mr. BARRETT. I hand you several sheets of reports made by the recount clerks at the table at which you acted as a watcher for Mr. Bogy, and ask you to examine them all and state whether or not there is any provision made in that form for the reporting of straight ballots or scratched ballots, or if there is just a provision made for the reporting of the total number of ballots cast for either candidate?

Mr. FEIGENBAUM. Of course, we want to interpose an objection that the sheets speak for themselves. As to what should have been inserted in there, the witness can't testify, but as to what is actually in the sheets the sheets are the best evidence.

Mr. BARRETT. I am asking at your table now.

A. I recognize this handwriting [indicating], and that is about what they did.

Mr. BARRETT. Lon, read the question to the witness; and if you will take your pipe out of your mouth and listen you may understand what I am talking about, and we may be able to understand you.

Mr. FEIGENBAUM. There is no objection to smoking. Others in the room are smoking.

(Last question read as follows: "I hand you several sheets of reports made by the recount clerks at the table at which you acted as a watcher for Mr. Bogy, and ask you to examine them all, and state whether or not there is any provision made in that form for the reporting of straight ballots or scratched ballots, or if there is just a provision made for the reporting of the total number of ballots cast for either candidate?")

A. There is no provision I see here for straight ballots and scratched ballots.

Mr. BARRETT. The only provision there is made for the recording of the total number of votes—that is, scratched and straight—is that right?

A. Yes, sir.

Q. And for recording rejected ballots, and for recording disputed ballots. What is your answer?—A. Yes; that is all there is here, and duplicate ballots, and so on.

Q. And that was the procedure followed at your table throughout, was it?—A. Where I was; yes.

Q. Now, at any time during the course of the recount, did you demand or suggest any other form than that?—A. I did not suggest anything.

Q. You say Commissioner Dempsey made a statement on Wednesday after Commissioner Arnold; that would be January the 12th, the day on which the actual recount began; is that right?—A. I understand so.

Q. Now, we are to understand you clearly that Dempsey made a statement at the time after Arnold, and made it in a loud tone of voice, so that all of the recount clerks, contestee and contestant and their counsel, and the watchers, could hear what was said; is that right?—A. Yes.

Q. Now, what was it that Dempsey stated on that occasion, Wednesday, January the 12th, after Mr. Arnold?—A. He made a statement that it was reported to him that some notes were taken of ballots, the numbers of the ballots by some of the clerks, and that they must not do it.

Q. That was on Wednesday, January the 12th, just when they were about to begin the recount, and they had not actually counted a single ballot. How could they have taken numbers at that time?—A. I am talking about when we were taking—when I was taking—I know I was taking the numbers of the scratched ballots and putting them down for the information of Mr. Bogy, who hired me for that purpose.

Q. Hired you?—A. Yes, sir.

Q. That's a good word. Now, this recount actually begun Wednesday, January 12, at 11 o'clock?—A. Somewhere around there.

Q. Now, at what hour on Wednesday was that announcement made by Dempsey?—A. I didn't pay no attention to the hour, but it was—I know the time had elapsed that we went through two precincts.

Q. In other words, after you had begun and counted two precincts Dempsey made this statement you have stated?—A. Yes.

Q. After your table had counted two precincts Dempsey made this statement that you complain of?—A. Yes.

Q. And that was about 12 o'clock that day?—A. Oh, no.

Q. What time?—A. I think it was the day after.

Q. Oh, it wasn't on Wednesday then?—A. No; it wasn't on Wednesday; I don't think so. I think it was the day after.

Q. The day after; that would make it Thursday. Now then, what hour on Thursday did he make this first statement that you complain of?—A. I didn't pay no attention.

Q. You didn't pay any attention?—A. No.

Q. It made no impression on you?—A. No.

Q. You couldn't give us any idea?—A. My impression was at the time that when it was forbidden to the clerks or the watchers to make any notes of these scratched ballots, I thought it was useless to have a recount, so I didn't pay no attention any more than that.

Q. I don't care about that. I want you to fix the time. It is important.—A. I can't say the exact time.

Q. You think, however, it was Thursday?—A. I think it was in the afternoon.

Q. You think it was Thursday afternoon?—A. I think it was Thursday afternoon, or maybe morning; I can't say that.

Q. You can't say whether it was morning or afternoon?—A. No.

Q. But you think it was Thursday. Now, where did Dempsey stand when he made that announcement, what part of the room did he stand in?—A. He came out of the office and he talked to us, and he talked to the others in the other room.

Q. He said it in a loud tone of voice, did he?—A. Yes.

Q. So that everybody in the room could hear it?—A. Yes.

Q. There had been some complaint about you taking numbers of the ballots?—A. Yes.

Q. Several complaints were made?—A. Yes.

Q. My attention was called to you taking the numbers of ballots, and I protested against your doing such things, didn't I?—A. Yes. We had a little spat together.

Q. And you had a yellow sheet of paper on which you had a lot of numbers, didn't you?—A. Yes.

Q. And you were taking the numbers of a lot of ballots, of voters?—A. Of scratched ballots.

Q. The numbers of voters, and I protested against your doing that because it would disclose how anybody voted, didn't I?—A. Yes.

Q. You didn't at that time tell me that you wanted only the scratched ballots where there was a similarity of handwriting; you didn't say that to me, did you, Mr. Hartmann?—A. I didn't take any——

Q. No, no. Now, get right down to the question, Hartmann.

Mr. Feigenbaum. Let him answer the question in his own way. Go ahead.

A. I didn't take any number of any single ballot except it was scratched.

Mr. Barrett. Now, Mr. Hartmann, I thought my question was clear, but for your benefit I will repeat it. Didn't I protest against your taking the numbers of ballots, saying that if you do that you are going to disclose the secrecy of the ballot; it will expose every man's ballot, how he voted, that is wrong; you should not do it?

A. You made that statement.

Q. Did you at that time then say to me that you were only taking the scratched ballots where there was a similarity of handwriting? Did you make any such statement to me at that time?—A. I said to you, "You know this game as well as I," and I said, "What's the use"—I made the remark to you, I said, "What's the use of having this contest going on if you can't detect fraud?"

Q. Mr. Hartman, did you——A. Listen. You were excited. I said, "No, just keep quiet. You know this game as well as I do."

Q. Mr. Hartmann, did you make that statement to me at any time?—A. That is what I told you there.

Q. You say you made that statement to me?—A. Sure.

Q. Do you deny that you never stated to me at any time that you only wanted to take the numbers of scratched ballots where there was a similarity of handwriting?—A. I stated that I only would take the scratched ballots, the number, and you said I have no business to take anything.

Q. Did you say anything to me about your wanting to take the numbers of scratched ballots where there was a similarity of handwriting? Did you make that statement to me, that you only desired to take the numbers of ballots where there appeared to be a similarity of handwriting? Did you make that statement to me?—A. No; I don't know now. I made that statement up there to the judges.

Q. Did you make it to me? Let the judges speak for themselves. Did you make it to me? Answer that question, yes or no.—A. I can't say yes or no.

Q. Did you make that statement to Chairman Arnold of the board?—A. No, sir.

Q. Did you make that statement to Commissioner Buder of the board?—A. No, sir.

Q. Did you make that statement to Commissioner Lammert of the board?—A. No.

Q. Did you make that statement to Commissioner Dempsey?—A. No, sir.

Q. You didn't make it to any member of the board, and you don't recollect making it to me?—A. I made that statement to the judges on the table there, and clerks on my table.

Q. Only to them?—A. And I made the statement to Mr. Bogy.

Q. Now then, you were undertaking to take the numbers of all the scratched ballots, weren't you?—A. At my table; yes.

Q. In other words, you wanted to get the numbers of all the scratched Republican ballots, didn't you?—A. Yes.

Q. And that is all you were taking, wasn't it?—A. That is all I was taking.

Q. Just the scratched Republican ballots?—A. Yes.

Q. Now, having the numbers of the scratched——A. Any scratched ballot.

Q. I see.—A. Not alone Republican.

Q. Were you taking the scratched Democratic ballots? Those that voted for Bogy?—A. Anyone.

Q. You wanted to take, as I understand, not only the scratched Republican ballots, but scratched Democratic ballots?—A. Anyone, Labor or Socialist.

Q. In other words, if any man scratched Hawes and voted for Bogy you wanted to take the number of that also; is that right?—A. Any man that scratched any candidate and voted for Hawes.

Q. What was your object in taking the number of the Democratic scratched ballots where Hawes's name was scratched out and Bogy's written in?

Mr. FEIGENBAUM. I submit the witness said he took the numbers of any ballots where Mr. Hawes's name was written in, and not where Mr. Bogy's name was written in.

Mr. BARRETT. Is that right? Maybe I misunderstood him. I thought he said every ballot.

A. I said every way, Socialist and Farmer-Labor.

Q. If I get you rightly, Mr. Hartmann, you took the numbers of all scratched ballots where Hawes's name was written in; is that right?—A. Yes, sir.

Q. Did you undertake to take the numbers of the scratched ballots where Bogy's name was written in?—A. Yes, sir.

Q. You did that in every instance?—A. In every instance, as far as I was——

Q. What was your object in taking scratched ballots where Bogy's name was written in?—A. So he has got absolutely a plain statement of the scratched ballots in that precinct, so he can do with it whatever he pleases.

Q. Then your object was not to discover similarity of handwriting of voters of scratched ballots who had written in Mr. Bogy's name?—A. That was not my object.

Q. That was not your object. And Mr. Bogy said nothing to you about that, did he?—A. No.

Q. You and he had not discussed it. Now, in the case of Socialist ballots where Mr. Bogy's name was written in, your object was not to ascertain similarity of handwriting in that class of ballots, was it?—A. No, sir.

Q. In other words, if there were any scratched ballots wherein Mr. Bogy's name was written, your object was not to discover similarity of handwriting, but just take the numbers of them and give them to Mr. Bogy; is that right?—A. Any scratched ballot, the number of the ballot.

Q. Wait a minute. We are speaking about particular ballots. In all scratched ballots where Bogy's name was written in with a lead pencil you took the numbers of them and gave then to Bogy; is that right?—A. I gave him all in two precincts.

Q. You gave them to him in two precincts?—A. I took them down in two precincts, and then we was told we could not do it any more, and we didn't do it.

Q. And your object was not to discover similarity of handwriting in scratched ballots where Bogy's name was written in, was it?—A. Some of them were attracting my attention as to similarity of handwriting, and in the different pencil writing; but he could do with it whatever he wants.

Q. You are getting away from my question. You have been engaged in politics a long time, haven't you?

Mr. FEIGENBAUM. Is that going in the record?

Mr. BARRETT. Yes; it goes in the record.

Q. And I want you to listen to my question and follow me. I say you took the numbers of scratched ballots, not only when Hawes's name was written in, but you took the numbers of scratched ballots where Bogy's name was written in, and you gave those to Mr. Bogy, didn't you?—A. No; I did not give them to him.

Q. You did in some instances?—A. I did not give them to him.

Q. You intended to give them to him?—A. It was for his use, because I was his watcher.

Q. It was not for the purpose of ascertaining similarity of handwriting of the name Bogy that was written in the ballot, was it?—A. I don't know for what his purpose was.

Q. You don't know what his purpose was, but you were willing to give him the number. Then you undertook then to take the numbers of all the scratched Republican ballots where Hawes's name was written in, didn't you?—A. I took every scratched ballot.

Q. I say all of them; I mean all of them where Hawes's name was written in?—A. Or Bogy's, anyone, any scratched ballot.

Q. And gave them all to Mr. Bogy?—A. No, sir; I did not give them all to Mr. Bogy.

Q. You intended to give them to him?—A. It was for his use.

Q. You took a list of several precincts of that character, didn't you?—A. I think I took two precincts.

Q. Two precincts; and you had a list; what did you do with that list?—A. When I could not give it to him any more, when it was forbidden, and we were sworn to secrecy and you interferred with it, then I did not bother about it any more.

Q. You mean I protested?—A. Yes.

Q. There was nothing secret about my protest; it was very loud?—A. Yes; it was very loud.

Q. And it was open and above board, wasn't it?—A. Yes.

Q. Now, then, Mr. Hartmann, when I protested against it, didn't you come aside and say to me, "This fellow, I don't know what he wants to do, but be wants to get the numbers of these voters, and he wants to go the limit"? Didn't you make that statement to me?—A. Yes.

Q. And didn' you intimate at the time that there was something wrong with him, and that he had an ulterior purpose in getting those ballots?

Mr. FEIGENBAUM. I object to what he intimated. Let him say what he said, if he said anything.

Mr. BARRETT. I say, did you not make a statement of that character?

A. No.

Q. You don't remember anything of that kind?—A. No.

Q. But you do remember making the statement that Bogy wanted to go the limit on everything; is that right?—A. That is what I understood. That is what he told me.

Q. But you told him you did not think he could get anywhere in this contest?—A. Not the way it was conducted.

Q. Wait a minute. Didn't you say you did not think he would get anywhere in the contest; that it would not show any fraud?—A. I never said in the contest; I said in the count; in this count, I said.

Q. Did you make this statement to me at any time?—A. Yes; I told you that, too.

Q. You did; when?—A. When we were—we were talking the same as we are now.

Q. Let's be a little particular now, Mr. Hartmann. Didn't Commissioner Dempsey make this statement that the watchers of either side were not to take the numbers of any ballots except those that were disputed or contested, and a record should be made of them by the recount clerk on their sheets; isn't that what he said?—A. Yes.

Q. Now that is an entirely different proposition from saying that you could not take the numbers of any ballots, isn't it?—A. Well, I took the numbers the first day, as I told you before, of those ballots, until it was reported to him from some party——

Q. Well, I will ask you to look at sheet of ward 27, precinct 23; ward 27, precinct 36; ward 2, precinct 5; ward 2, precinct 15; ward 18, precinct 6; ward 19, precinct 3; ward 19, precinct 11; and ask you to examine each one of those sheets that were signed by Walsh, Demuth, Leahy, and Harrison, and ask you whether or not those sheets don't indicate numbers of ballots in dispute?—A. There is only one here disputed.

Q. Well, give the ward and precinct number of that—ward 27, precinct 23.—A. Yes, sir.

Q. Now, then, I will ask you to look at ward 20, precinct 8; don't that indicate a Republican ballot, number 265, name scratched out?—A. Yes; but that is not disputed.

Q. Wait a minute; isn't that a record made of that ballot and directing attention to it?—A. Of course it is.

Q. And it gives the number of the ballot and the reason it is not counted, doesn't it?—A. I don't know whether they counted it or not.

Q. I say, it designates "Name scratched out." Now I direct your attention to sheet for ward 19, precinct 11, and ask you if it is not recorded that two Republican ballots, 278 and 328, "Names torn off," and the Democratic ballot 362 of like character, "Name torn off"?—A. Yes.

Q. And if it does not so designate them and give the number of the ballot?—A. That is what this does; yes. I saw these things.

Q. Now, ward 19, precinct 3, I will ask you if the report does not designate Republican ballot 148, "Name scratched"?—A. Yes.

Mr. FEIGENBAUM. May I suggest here that these sheets will speak for themselves. They are all going into the record, and we are just consuming a lot of time looking at each one and asking what they show. They will all be in the record.

Mr. BARRETT. This witness has stated there was no record made of disputed ballots, or anything of that kind, and I want to direct his attention to it.

Mr. FEIGENBAUM. He said scratched ballots, as I understood it. These are not scratched ballots.

Mr. BARRETT. Ward 3, precinct 15, there is a record made there of ballots and their cause, isn't there?

A. Yes.

Q. Ward 3, precinct 5, also designates the numbers of ballots and the reasons are there designated on the sheet, doesn't it?—A. Yes, yes; I saw all these.

Q. Now, ward 27, precinct 36, gives the numbers of ballots and designates the reasons why they give the numbers, doesn't it? Isn't that right?—A. Yes. That shows nine ballots Bogy not scratched, two names on ballots.

Q. That is a record of that, isn't it, and also a record of rejected ballots with their numbers and the names scratched; isn't that right?—A. Yes.

Q. So that in each one of these precincts which you have gone over, to the number of eight, that were recounted at the table at which you acted as a watcher, a record of ballots by number and the cause for being recorded is given?—A. Sure.

Q. Yes. And that was because there was some question raised about the validity of those ballots, wasn't there?—A. It was a matter for the judges; I did not bother about it.

Q. I say the judges made that record or the recount clerk made these records, didn't they?—A. Sure.

Q. And that was for the information of the election commissioners, the contestant and contestee, if they wanted to challenge the validity of those ballots, wasn't it?—A. I guess so.

Q. And they give the number of ballots also that have one initial and no initials on them, don't they?—A. They speak for themselves.

Q. I say they do. They done that, didn't they?—A. Yes.

Q. So that the validity of that class of ballots might be challenged, didn't they? Is that right, or is that wrong?—A. I don't know whether it was challenged or not.

Q. Do you know or don't you know?—A. I did not challenge them.

Q. I say, the record shows the ballots that have only one initial or no number?

Mr. FEIGENBAUM. I submit the records speak for themselves, and there is no purpose, and can be no purpose in this examination, asking a man what these records show when they are all going to be in evidence, because the witness has not contradicted the statement. All I understand him to say is that no record was made of scratched ballots, and nothing that has been introduced with reference to these sheets indicate that any record was kept of scratched ballots, and it only consumes time and nothing more.

Mr. BARRETT. I resent that insinuation. The witness has made a statement here which shows he has an erroneous misconception of the matter, and I want to straighten him out, if I can straighten him out on cross-examination; and instead of trying to consume time we worked until 9 o'clock every night, and are willing to do it every night. This man is an expert politician and has been for years.

Mr. FEIGENBAUM. I did not know about that.

Mr. BARRETT. I know that he is, and he says so.

Mr. FEIGENBAUM. He did not say he was an expert politician; and if he was in politics that is no reflection on him.

Mr. BARRETT. I did not say that as a reflection on him, but to show his experience with and his knowledge of elections and election contests. He is not an illiterate.

Mr. FEIGENBAUM. The questions you have asked him deal with the records and the records speak for themselves.

Mr. BARRETT. The record shows the ballots having one initial or no initials that were cast for Bogy or Hawes, as the case may be?

A. I know on my table that the judges and clerks made some errors in making these records for two days, and then they got another instruction, and their attention was called to it, but I did not even pay attention to it.

Q. You don't know then what records the recount clerks made up, do you?—A. No. I saw them making it up, but I didn't pay no attention to it.

Q. Now, Mr. Hartmann, if you wanted to question any ballots at the table at which you were situated, or if you wanted to challenge a ballot, do I understand you to say that you would not be permitted to make that challenge and have a record made of it for review by the board of election commissioners, or counsel?—A. I understood from the statement of Mr. Dempsey that the clerks have no right, or nobody has a right to make any records, or take any numbers of the ballots which were scratched.

Q. Say, you have got scratching on the brain. Now, you answer the question. Please read it to him, Lon. (Last question read as follows:

"Now, Mr. Hartmann, if you wanted to question any ballots at the table at which you were situated, or if you wanted to challenge a ballot, do I understand you to say that you would not be permitted to make that challenge and have a record made of it for review by the board of election commissioners, or counsel?")

A. I had no right to make such a statement.

Q. How?—A. I had no right to make such a statement.

Q. I other words, if I understand you correctly, neither you nor Mr. Bogy nor his counsel could challenge the validity of any ballot for any cause; is that right?—A. That is the way I understood it.

Q. So that your understanding that nobody had a right to question the validity of the ballots, or the legality of the ballots, for any cause whatever, except the recount clerk; that is your understanding of it, is it?—A. That is my understanding.

Q. And that is your understanding of the instructions that were given by the board of election commissioners, is it?—A. Yes, sir.

Q. Now then, what were the watchers there for then? What did they amount to if that was the case?—A. I didn't think the watchers amounted to anything.

Q. Now, isn't it a fact, Mr. Hartmann, that I myself came over to the table at which you were situated and instructed the watcher that was representing Mr. Hawes how to make out a memorandum that was to be turned over to me?—A. No.

Q. You never saw me do that?—A. No. I never paid attention to what you said to anybody else. When you talked to me directly I gave you answers.

Q. And you were so much engrossed in taking the numbers of the ballots you did not see what anybody else was doing?—A. I felt under moral obligation to the man which hired me to watch that I take interest in his——

Q. All you were trying to get was the numbers, wasn't it?—A. Naturally, of those scratched ballots.

Q. You wasn't looking even for similarity of handwriting?—A. Yes, I did.

Q. You did?—A. Yes.

Q. Now then, did you scrutinize any ballots for the purpose of ascertaining whether or not there was a similarity of handwriting?—A. Yes.

Q. How often?—A. At least five or six times.

Q. At least five or six times. Now, what ward or precinct did you note it the first time?—A. I can't say the ward.

Q. You can't say?—A. And I can't say the precinct.

Q. Can you designate any ward or precinct in any one of the five where you think there was a similarity of handwriting?—A. I know in the first when I was looking, you know, for the similarity, that the judges and clerks went so fast about it that you could not compare them, but to my satisfaction I felt I knowed that some handwriting looked similar to me.

Q. Now, you have not answered my question yet, Mr. Hartmann. I asked you if you can give us the number of the ward and precinct in any one of the five——A. I can not give it to you now.

Q. No, you can't give it. In other words, they turned them over fast, and you did not have an opportunity to see whether there was or not; is that right?—A. Practically not; no.

Q. And they turned them over there fast, and still you could conclude there was a similarity of handwriting; is that right?—A. On five or six occasions I asked to look at these ballots, and there is where my conviction came that it was the same handwriting.

Q. What examination did you make on those occasions?—A. Just looked at them and compared them, and the minute I looked at them they were put together right away, and taken away.

Q. How many of them did you compare?—A. How many?

Q. Yes.—A. I compared about 20 or 25.

Q. Twenty or twenty-five all told?—A. Yes.

Q. And you say you asked permission to examine them all and they refused you?—A. I did not ask their permission. I just asked them to let me see those.

Q. And did they let you see them?—A. They let me see them, yes; just for about a—long enough, you know, to pass judgment on it right.

Q. But you formed an opinion on what you saw; is that right?—A. Yes.

Q. And you concluded that there was a similarity of handwriting?—A. On certain ballots; yes.

Q. On certain ballots. Now, did you make any report of that fact at the time to Mr. Bogy?—A. No, sir.

Q. Did you make any report of it to the board of election commissioners?—A. No, sir.

Q. Did you make any notation of the ward and precinct where you thought that occurred?—A. I didn't think it was worth while doing it as long as we could not take the numbers down of the ballots.

Q. Well, did you do this, Mr. Hartmann: Did you at the time insist that you had a right or that Mr. Bogy had a right to examine these ballots for the purpose of determining whether or not there was a similarity of handwriting, or for the purpose of having this photographed if he so concluded there was a similarity of handwriting? Did you make any request or demand for that purpose?—A. No.

Q. At any time?—A. No. The minute that we were not allowed to take any numbers of the ballots I passed everything up.

Q. Couldn't the numbers of the ballots be taken after they were photographed?—A. How could you tell the number of the ballot to look for?

Q. During the course of the recount the ballots were exposed; you could have examined them and compared them, couldn't you, and laid them alongside of each other and compared them, couldn't you?—A. No; I couldn't do that.

Q. I say you could have done that?—A. No, sir.

Q. Why couldn't you have done it?—A. Because we were not allowed.

Q. I see. But if you had been permitted to have done so, you could have made such an examination, couldn't you?—A. Yes, if you had been permitted to do so.

Q. When the clerks refuse to give you that opportunity to make such an examination, why didn't you make a protest to Mr. Bogy or to some member of the board?—A. I called the attention of Mr. Bogy to that.

Q. Did you give Mr. Bogy the number of the ward and precinct in each instance?—A. No; but I told him at the time when I was watching, I called his attention to it and I says, "This count don't amount to anything as long as we can't get the number of the ballots so that we can get them photographed."

Q. You just told Bogy that it didn't do any good because you could not take the numbers, and you did not take the trouble to make a notation of the ward and precinct number where you thought there was a similarity of handwriting?—A. What's the use of——

Q. I say, you didn't do it?—A. No, I didn't; no use of doing it.

Q. Don't you know, Mr. Hartmann, if you had done that and your request was denied by the recount clerks that you could have gone before the board and made your statement, and been afforded that opportunity? Couldn't you have done that?—A. I reported it to Mr. Bogy for him to go and make his claim. I told him that. I was not the contestant.

Q. Why didn't you give him the number of the ward and precinct when they refused you?—A. I showed him the numbers of the ballots I took, and he went, you know, and he remonstrated, I suppose, and then he——

Q. You showed him the numbers?—A. I showed him different numbers.

Q. Did you give them to him?—A. No.

Q. What did you do with them?—A. I had them on a yellow slip.

Q. What did you do with it?—A. After the thing was over I tore it up

Q. I see. Well, why did you tear it up? Why didn't you give it to Bogy?—A. He didn't ask me for it.

Q. Mr. Hartmann, weren't you called before Commissioners Arnold, Dempsey, and Buder and told that you could not take the numbers of ballots except the numbers of the ballots that were in dispute or challenged, or whose legality was questioned, that that would be the only instance in which you could do it, because the stipulation provided that the numbers of the ballots were not to be taken except in the instances I have stated?—A. I think that was the cause that Mr. Dempsey made the statement; I think that was the cause.

Q. Now, that statement was made to you by the members of the board, wasn't it?—A. Yes.

Q. And so you were given to understand that you were not to take the numbers of the ballots except those ballots that were in dispute, or whose legality or validity was questioned; isn't that right, Mr. Hartmann?—A. That is what I understood afterwards. But I had them already before.

Q. Now, then, immediately after that conference didn't Commissioner Dempsey go out and make the announcement that you say that he did?—A. I believe after a while, you know, he come out and made that statement.

Q. Now, you were called before the board of election commissioners, the three members of the board of election commissioners by reason of a protest being made about your conduct in taking this list of numbers of ballots; that is the reason you were called before the board?—A. I presume.

Q. And as a result of that this announcement was made by Commissioner Dempsey afterwards?—A. I presume.

Q. And it was not made by Commissioner Dempsey until after he had this talk, or after this meeting with Commissioners Arnold, Buder, and himself?—A. I presume.

Q. Now, you are not working in Mr. Bogy's behalf in this contest?—A. No, sir.

Q. Have you taken any interest in it since the taking of these depositions began?—A. No, sir; except that I am requested to be here.

Q. Mr. Hartmann, you are at the present time the committeeman from the twenty-seventh ward for the Farmers-Labor Party, are you not?—A. Yes, sir; I act as such now. That is the twenty-sixth ward, not the twenty-seventh.

Q. Now, you spoke about the seal of the box being broken; what ward and precinct was that?—A. I didn't take it down. I called Mr. Bogy's attention to it, and told him to take it down.

Q. Told him to take it down. Do you know whether or not Mr. Bogy went into the vault and examined the box with two clerks?—A. I don't know anything about that.

Q. Now, then, you spoke about Claudius and Stansbury being called when this particular box was being opened from which you said the seal was broken; were they both present, or just one of them?—A. I said I did not know who brought that box, whether it was Claudius or Stansbury.

Q. Now, the seal consists of a slip of paper pasted at both ends, lapped over the top of the box and pasted; is that right?—A. Yes.

Q. Now, do I understand you to say that this seal was broken right through, that it was torn?—A. It looked to me like if a man put his finger right through it, you know [illustrating], all along the edge of the top of the box.

Q. And tore it?—A. And tore it.

Q. And it was torn all the way across?—A. Torn through; yes, sir.

Q. And did you hear the explanation that this box came open from the heat softening or drying the mucilage?—A. I didn't hear that.

Q. And that they were piled on top of each other in a small space?—A. No, sir; I didn't.

Q. You didn't hear that, and you don't know anything about it? Did you hear such a statement as that made to Mr. Bogy at the time by Mr. Stansbury or Mr. Claudius, or both of them?—A. No.

Q. You didn't hear that?—A. No.

Q. And you don't know the ward or precinct?—A. I don't know the ward or precinct. I know when it come there. I called Mr. Bogy's attention to it, and told him to take note of it.

Q. Now, what compensation did Mr. Bogy pay you for acting as a watcher for him during the recount?—A. He hasn't paid me so far.

Q. What has he agreed to pay you?—A. The same as the balance, I suppose.

Q. How much is that?—A. I don't know.

Q. Haven't you any understanding with him?—A. I didn't bother about it.

Q. These watchers that came in here testified to various sums, some five and some——

Mr. FEIGENBAUM. No, no; they didn't; they all said $7.50 a day.

The NOTARY. They all said $7.50.

Mr. BOGY. If you want the list, Mr. Hartmann's name is on the list, $7.50 a day for five days. It was all calculated up at Mr. Bauer's office.

Mr. BARRETT. That is all.

Redirect examination by Mr. FEIGENBAUM:

Q. I want to ask one other question. You live near Mrs. Caulfield?—A. Yes.

Q. In that neighborhood?—A. Yes; within one block.

Q. And you have known Mrs. Caulfield for some time?—A. Yes.

Q. You know her when you see her?—A. Yes, sir.

Q. Do you know Mr. Caulfield, her husband?—A. Yes, sir.

Q. And you know her mother?—A. Yes, sir.

Q. Mrs. Rozelle?—A. Yes, sir.

Q. Mrs. Rozelle is Mrs. Caulfield's mother?—A. Yes, sir.

Q. And lives with her?—A. Yes.

Mr. FEIGENBAUM. That is all.

(Signature waived by agreement.)

Mrs. MYRTLE LORING CAULFIELD, a witness of lawful age, being produced, sworn, and examined on the part of the contestant, deposeth and saith:

Direct examination by Mr. FEIGENBAUM:

Q. Please state your name.—A. Myrtle Loring Caulfield.

Q. Are you married, Mrs. Caulfield?—A. Yes.

Q. Who is your husband?—A. O. P. Caulfield.

Q. Are you related to Judge Caulfield?—A. Brother-in-law of my husband.

Mr. BOGY. Brother of your husband.

The WITNESS. A brother of my husband, a brother-in-law of mine.

Mr. FEIGENBAUM. Where do you reside, Mrs. Caulfield?—A. 1310 Bayard.

Q. Mrs. Caulfield, were you acting as a watcher for Mr. Bogy during the recount conducted at the election commissioners' office in the city of St. Louis in the Bogy-Hawes contest?—A. I was.

Q. During the time from January 12 to 17?—A. I think I did not go down until the 13th.

Q. The 13th; that was the second day after the recount?—A. I think so. I would not be positive, but I believe they had started it one day before I went down. Otherwise you had it right.

Q. You were there from the 13th?—A. I think it was Wednesday, the 13th.

Q. Wednesday was the 12th.—A. It was Wednesday afternoon, then.

Q. You came there Wednesday, the 12th?—A. Yes.

Q. In the afternoon?—A. Yes.

Q. And you were there until the completion of the recount?—A. Yes.

Q. Mrs. Caulfield, what table were you stationed at?—A. I think you might call it—you would call it the first one as you come in the south door.

Q. It was either the first or the last?—A. It was the first one if you came in that way [indicating], and the last one if you came in this way [indicating].

Q. I think she is pointing south.—A. On the first table to the south.

Q. Mrs. Caulfield, while acting as watcher at that table did you hear the instructions read the first day by Judge Arnold, or was that read prior to your coming there?—A. I think I did not hear that, Mr. Feigenbaum. I don't know exactly what you mean by the "first instruction," but I am pretty sure I did not hear it at the time; I heard about it afterwards.

Q. Now, did you hear any of the instructions given by Commissioner Dempsey after that?—A. Well, do you mean the instructions when he came to the table, or what he said out on the floor in the big room?

Q. First what he said out in the room, general instructions.—A. Well, I was pretty far away to catch every word, but my instructions were that the numbers of the scratched ballots were not to be taken, no note was to be taken, that the ballots were to be counted as cast; that was what I understood, the outline. And Mr. Bogy then got up and said that as contestant he didn't know how in the—let's see, what did he say—the thunder, or something—what was it he said?

Q. Just take your time and try and recall.—A. The exact words?

Q. Give us the substance of what he said.—A. Anyway, he didn't know how in the—I could say it a whole lot plainer, but I don't want to—how in the dickens he was going to take any pictures, or find out anything about this if he could not get any kind of list, or any number of scratched ballots, and he had stated clear that that was the part of it that he wanted, because if there was any fraud showed Congress would take it up and do what he was not allowed to do or could not do there.

Q. Now, Mrs. Caulfield, was that instruction given by Mr. Dempsey Friday morning?—A. No. It seems to me that was Thursday, wasn't it?

Mr. Bogy. That was Friday.

The Witness. I don't know. I would not be positive whether that was Thursday or Friday.

Mr. Feigenbaum. Did you hear more than one set of instructions given by Mr. Dempsey?

A. Well, do you mean out on the floor, or when he came down to the table?

Q. On the floor.—A. Well, I don't know. There was so much storming going on all the time it was kind of hard for me to distinguish. It seemed to me every time the Republicans made any comment, or anything, there was always something said; no I don't know just exactly what one you mean.

Q. Now, if it has been testified here at the time Mr. Dempsey made such a statement was Friday do you believe that to be correct as to the time when it was said?—A. I believe it was Friday before lunch. Wasn't it Friday before we went to dinner?

Q. To the best of your recollection?—A. To the best of my recollection——

Maj. Hawes. Well, the counsel again suggested the day by putting in the word "Friday" when the witness said Thursday.

The Witness. I beg your pardon. I said at the time I was not positive. But since I come to think of it I recollect something that came up directly after that that made me say something to one of the gentlemen at the table that makes me positive it was Friday morning. But there was so much devil raised I said to Mr. Feigenbaum, "If he puts you out of one door you come in the other."

Maj. Hawes. The lady distinctly said Thursday, and Mr. Bogy and I looked at each other and laughed, because it was a contradiction. And you afterwards called her attention to Friday and she then remembered very positively it was Friday.

The Witness. I said I was not positive about Thursday. I tell you what I did do. I made note of all these things.

Mr. Barrett. Yes, when you get your cue you know what to say.

Mr. Feigenbaum. Mrs. Caulfield, did you hear any statement made by Mr. Dempsey previous to that one, either at your particular table, or elsewhere?

A. No. The statement he made was after that. It was on Friday morning, and—wait until I get these ballots, or this stuff I have here [referring to papers.] This happened early Friday morning, almost the first complaint that was made Friday.

Q. Which are you referring to now, Mrs. Caulfield?—A. You know, this being my first experience in a contest, this is my first offense, so I don't know just exactly what to do. Yes, that is the thing that started the first real rough house we had at our special table. It was a rough house, too.

Maj. Hawes. Put that down, "rough house."

The Witness. Put down "rough house" if you want to; that is all right, because he raised——

Mr. Feigenbaum. Who did when you say "He"?

A. Mr. Dempsey. And when we came to these ballots——

Q. What ballots do you refer to now?—A. The fourth ward, eleventh precinct. And when he come to these, there were six of them, and I would have said that the six were identical. And after——

Q. What do you mean by "identical," Mrs. Caulfield?—A. I said the handwriting was so very much alike you could not possibly tell one from the other. And so after that they called Mr. Dempsey, or one of the commissioners; it happened to be Mr. Dempsey that came. I don't know whether they called him or not. And he came over and raised cain about that table causing more trouble than any other table in the room, and he said, "What is the trouble now?" And Mr. Feigenbaum said, "These three ballots," he says, "these are in the identical handwriting, spelled alike, and all, and it looks like fraud." And Mr. Dempsey said—I didn't know it was Dempsey at that time, but I found out afterwards. Mr. Feigenbaum said, "It looks like these three ballots looks like fraud." And he says, "I won't sign a report with these in with the regular vote, scratched ballots." And he says, "That is none of your"—well, anyway, he used a curse word—"business"—I didn't want to put that in—"if the whole district looks like fraud. That is not what you are here for. You are here to recount these ballots, and if you don't do better this afternoon than you have been doing you will be looking for another job."

Q. That was said by Commissioner Dempsey?—A. That was said by Commissioner Dempsey. I suppose up to that time that he was a Democrat, and I found out afterwards he was supposed to be a Republican.

Maj. HAWES. I object to that statement because there is no evidence to bear it out, and it is absolutely untrue. Mr. Dempsey was elected by the Republican city central committee, indorsed by them, appointed as a Republican, and has always voted the Republican ticket.

Mr. FEIGENBAUM. Now, I submit that that is an unfair statement made on behalf of contestee, undertaking to testify without being under oath. That it is an improper way of showing whether or not Mr. Dempsey was or was not recommended by the Republican city central committee, and is not the proper way of introducing testimony of that character.

Maj. HAWES. You understand that that is a serious charge to make, that a man is not a Republican when the man is appointed as a Republican, serves as a Republican, and acts as a Republican. It is an attack upon him which is in the nature almost of slander.

The WITNESS. I did not say that he was.

Mr. FEIGENBAUM. Just a moment. I want to at this time object to long statements made into the record by contestee when he is not a witness in the nature of what would appear to be facts.

Maj. HAWES. I have made similar objections to counsel for contestant making long statements and occupying time, but there was no question that called for such an answer from the witness. There was no occasion for her making such a statement.

The WITNESS. There was this occasion, if you will please let me explain and tell you what I meant. I was a perfect stranger——

Maj. HAWES. I suggest that the witness be asked questions and required to answer them.

The WITNESS. I insist on telling what I meant by that.

Mr. FEIGENBAUM. Go ahead and tell what you meant by that.

A. I meant by that I was a perfect stranger and the commissioners were strangers to me, and I was there under the impression that Mr. Dempsey was a Democrat up to that time; then I was informed that he was a Republican. Is there anything wrong with that statement?

Q. Mrs. Caulfield, in the capacity of watcher for Mr. Bogy, did you look to see whether there was any similarity of handwriting appearing in the words "Harry B. Hawes," or "Harry Hawes," or "Hawes" being written in where Mr. Bogy's name was scratched in any number of ballots in a particular precinct?—A. I certainly did, walked all the way around the table and looked at them as closely as I possibly could. [Witness gets up from witness chair.]

Mr. FEIGENBAUM. Just sit down.

The WITNESS. I thought you wanted to know the number of the precinct.

Q. Now, you may state whether or not you saw any groups of ballots in any one precinct, Republican ballots scratched and the name "Hawes" written in in the same or similar handwriting?—A. I certainly did.

Q. Can you give us an estimate of the number of Republican ballots you believed the name Hawes was written in in the handwriting that was identical or similar to others in the same group and same precinct.—A. I can not give it to you without looking at this. I have the numbers of ballots, and the numbers in some cases where they are similar, and so forth, if you want to look at this. [Referring to paper.]

Q. Can you give us any estimate of how many such ballots you saw all told?—A. No; I can not give you an estimate because there was so terribly many, I quit trying to keep tract of them. I just picked out certain precincts and wards where there was certain numbers, and then—but I did not make any attempt, because I just thought it looked like almost a useless job, more than I can get done in this little time I am here to get all of those.

Q. Now, had you taken any numbers of ballots before Commissioner Dempsey made the announcement which you stated a few minutes ago, that no numbers of scratched ballots were to be kept?—A. Yes; I had taken some. At least, I had not taken them; the gentleman at the table had given me some.

Q. Did you take any after the announcement of Commissioner Dempsey?—A. Did I take any afterwards?

Q. Yes.—A. I don't think so. I would not say positive whether I did after or not. I think I did though, when I got a chance.

Q. When you got a chance?—A. Yes.

Q. Well, most of the time were you given a chance to take numbers?—A. No; I was not given a chance; I just took it when I got it.

Q. When weren't you given a chance to do so?—A. Well, I don't know—when they put the ballots on the table unless I was quick enough to get them, and sometimes when they called off a number I could get it that way.

Q. Mrs. Caulfield, did you notice any partiality shown either contestant or contestee during the progress of the recount by the election commissioners or their clerks?

Mr. Barrett. I object to that question as calling for a conclusion. Let her state the facts.

The Witness. I would like to answer that, because I had a little conversation with Mr. Arnold on the side.

Mr. Feigenbaum. You did have a conversation with Mr. Arnold?

A. Yes.

Q. Will you relate what that conversation was?—A. It was Saturday evening, just as we were starting to go out to have something to eat, just as they took a basket of dinner in to Mr Hawes, into Mr. Dempsey's room, and I remarked that looked awful good and I wished we didn't have to go out, or something like that.

Maj. Hawes. The lady has made a misstatement.

The Witness. You want me to say the whole thing that happened there?

Mr. Feigenbaum. Yes; go ahead.

A. Mr. Arnold was there, and Mr. Bogy says, "Mrs. Caulfield, Mr. Arnold." And he says, "Honest, Glendy"——

Q. Who said that?—A. Mr. Bogy. He says, "What do you think about this?" He says, "Isn't it the most fraudulent thing, reeking with fraud of anything you ever saw?" And Mr. Arnold replied, "Simply horrible." He says, "The worst I ever saw. I knew you didn't have any chance to gain anything in this recount, because those fellows in that district, knowing the penitentiary was staring them in the face, fixed the ballots in the box to conform with the returns." And I remarked to him then, "My goodness, this is the most Democratic thing I ever got into outside of Jimmy Miles's ward." He says, "What makes you think so?" I says, "What you can't see and hear you feel." I says, "It reminds me of Jimmy Miles's ward on election day, when somebody told me wholesale repeating was going on down there and I went down there and saw it."

Maj. Hawes. I object to all of this, of course. It has nothing to do with the conduct of the recount. The lady was there in the capacity of a watcher, and her testimony must be confined to the examination of the boxes and the ballots at her particular table. And I assume that Jimmy Miles, or somebody else, has nothing to do with this contest. The lady ought to know that.

The Witness. Well, you asked me if I noticed partiality, and I tried to answer by saying it was strongly Democratic.

Mr. Barrett. And it is not responsive to the question; and I want to resent the insinuation about it being Democratic, Mrs. Caulfield, please.

The Witness. Well, it was.

Mr. Barrett. I say I want to resent it, and I want you to know that I do.

The Witness. Well, that is all right. That is your privilege.

Maj. Hawes. The witness has a perfect right to name any specific instance of partiality at any table, or in any ruling; but her conclusions about partiality have no part in this record. She has been a champion of Mr. Bogy's throughout the primary, throughout the election, is his relative; and I object to these long stump speeches being put into the record.

The WITNESS. Mr. Hawes, please let me say something. Not Mr. Bogy especially, but the entire Republican Party. If you say that, please include John W. Dunn, L. D. Thompson, and every other Republican on the ticket, and any other one of them that had the same experience that Mr. Bogy had. I would have done just the same as I did with Mr. Bogy, because I certainly worked for the Republican Party and the ticket.

Maj. HAWES. I object to all these speeches by the lady.

Mr. FEIGENBAUM. You referred to the office of Mr. Hawes and Mr. Dempsey; did you mean Mr. Hawes and Mr. Dempsey, or Mr. Arnold and Mr. Dempsey?

A. I don't know which it was. It was the last room on this side. [Indicating.] A man came in with a basket of dinner, and I said, "I think that is kind of selfish for us to have to go out," and he said, "This is for Mr. Hawes and Mr. Dempsey." That is all, because it was very cold was the reason I made the remark.

Mr. FEIGENBAUM. Mrs. Caulfield, did you notice in the recount of any one precinct of the fourth ward where a large number of ballots had only one initial of judges or clerks to them?

A. Yes, I did. I think, as near as I can recall, without looking at my notes, it was the eleventh precinct of the fourth ward where there was a good many.

Mr. BARRETT. That is already in the record furnished to you.

Mr. BOGY. It was 116, I think.

Mr. FEIGENBAUM. That is all right. We won't go into that.

Q. You are a cousin of Mr. Bogy?—A. Through my mother's family, yes.

Q. Through your mother's family?—A. Yes.

Q. Mrs. Caulfield, on election day at the last general election, November the 2d, 1920, did you drive or were you in a machine driven by Mr. Bogy through the fourth ward following any cars where the banners of Mr. Hawes were displayed?—A. Yes. A lady telephoned and said, "For heaven's sake do you know where to reach Mr. Bogy? The repeating that is going on in the fourth ward is something terrible. They are going from precinct to precinct." And shortly after that he came by on his way to the sixteenth precinct——

Q. Who did?—A. Mr. Bogy. I was chairman, had been for a good many years, of that particular precinct, and I told him about it. And he said, "Well, I believe I'll take a run down there." I said, "Well, I have heard of repeaters and heard of repeaters"——

Mr. BARRETT. Are you testifying for somebody else? If she is going to testify that she saw this herself, all right.

The WITNESS. No. She told me to go down there. So I asked him to take me down.

Mr. BARRETT. Wait a minute now. That all ought to be stricken out of there.

Maj. HAWES. Counsel heard the whole statement going in there that this was a telephone conversation——

The WITNESS. For us to go down there.

Maj. HAWES. Or communication over the 'phone—excuse me, for a minute—and the best witness is the party that telephones——

The WITNESS. Let me tell you that——

Maj. HAWES. One minute. Especially as there has been no evidence thus far introduced into this record of any repeating in the fourth ward.

The WITNESS. Well, it certainly——

Mr. BARRETT. Or any other ward.

The WITNESS. It certainly took place that day.

Maj. HAWES. I suggest that the witness please control herself.

Mr. FEIGENBAUM. Now, Mrs. Caulfield, whatever conversation you had with this lady lead you to join Mr. Bogy in a machine and ride to where you followed some other cars?

A. Down in the fourth ward.

Q. Now, tell us what you saw?—A. Saw as many as four and five men in one machine go from one place to another.

Q. What do you mean by "From one place to another?"—A. One precinct to another, and then drive up and go in and vote, and come out and go some place else; and there was some in machines and some on foot, and I wanted to see it, because I had read about that and heard about that, but I had never seen any real ones, and this is the reason I wanted to go and see them.

Q. Did you see the same individuals get out of one machine?—A. Quite a few would go in. Some places the windows were glass and you could look in and see them go in and vote the second and third time in one ward.

Q. So they did that in two or three precincts in the same ward?—A. Yes.

Q. Did you follow the same machine?—A. Followed the same and followed other ones, but I did not get to stay very long because I had to get back and attend to my own business. I was working in my own ward that day.

Mr. Feigenbaum. That is all.

Cross-examination by Mr. Barrett:

Q. Now, Mrs. Caulfield, let's get right down to this fourth ward. Please get your mind right on it and never get away from it. You said you went down in the fourth ward?—A. Yes.

Q. And you saw as much as four or five men in a machine?—A. Yes.

Q. And they would drive up to a precinct and vote?—A. Yes.

Q. And then come out and go in and vote again?—A. And go some place else.

Q. But they would vote as much as two or three times in one——A. Some places there was as much as three times, but I won't say that I saw them vote in every instance. Except where the front was glass I could not see in.

Q. Now, tell us the first place you saw these men go in and vote. Give us the ward and precinct, and the street number.—A. I can't tell you that, because it was—really, I can not tell you the precinct, because——

Q. How many men were in the machine when you first observed it?—A. Four men.

Q. How many machines?—A. I only saw one machine when I started out.

Q. Where did you see it?—A. I think it was Fifteenth and Cass.

Q. Fifteenth and Cass?—A. Yes.

Q. Where was it standing?—A. When I first saw it it was coming along the street.

Q. And where did it stop?—A. Stopped at Fifteenth and Cass.

Q. Where was the polling place?—A. I can't tell you that either, because I am a perfect stranger in that neighborhood.

Q. You saw the four men go into some polling place there?—A. Yes.

Q. Did you go in and follow them?—A. No I couldn't go in; the door was closed and I could not get in.

Q. How do you know they voted?—A. I walked up to the glass window and saw them.

Q. Now, I would like to have you tell us the location of that particular polling place that you saw these four men go in and vote?—A. I can't tell you that.

Mr. Leon Feigenbaum. Just a minute; she has stated she doesn't know.

Mr. Barrett. Just a minute. Let the record show—what is your name?

Mr. Leon Feigenbaum. Feigenbaum.

Mr. Barrett. What is your first name?

Mr. Leon Feigenbaum. Leon Feigenbaum.

Mr. Barrett. Let the record show that Leon Feigenbaum now appears as counsel for contestant.

Q. Now, which side of the voting booth was the door on?—A. Which side of the polling place?

Q. The west side or east side?

Mr. Feigenbaum. State if you know.

A. I don't know what you mean.

Mr. Barrett. There is an entrance to the poling place, isn't there?

A. I think—I took—I noticed very particularly it was on the south side of the street.

Q. What was it, a store or residence?—A. Store.

Q. Now, where was the door with respect to the store, on the east side or the west side?—A. On the east side of what?

Q. The east side or the west side of the store, or was it in the middle?—A. It was in the middle.

Q. It was in the middle, and there was a showcase on either side?—A. I can't tell you about that.

Q. What kind of a store was it?

Mr. Feigenbaum. Just a minute. I object to that line of testimony.

Maj. Hawes. This is cross-examination, Mr. Commissioner.

Mr. Feigenbaum. I object to that. This witness has already stated she doesn't know the exact location; she stated she can not describe the store; she stated she is not well acquainted with the neighborhood——

The Witness. Never was there before in my life.

Mr. FEIGENBAUM. And this testimony is not intended to bear out any facts, but merely to substantiate what she has said, that she don't know exactly how the store was located.

Mr. BARRETT. Now, go ahead and answer the question.

Mr. FEIGENBAUM. State if you know.

Mr. BARRETT. Now, wait a minute. I am conducting this examination. Read my question, Lon. And I want it answered.

(Last question read as follows: "What kind of a store was it?")

A. I don't know, but it impressed me as having been a vacant store before they fixed it up for a polling place.

Q. You don't know what the number of it was?—A. No, sir; I can't tell you that, because I was only there a very little while.

Q. There was one machine there?—A. At that time; yes.

Q. What time of the day was it?—A. Shortly after dinner.

Q. Was it after 1 o'clock?—A. Yes.

Q. Between 1 and 2?—A. I would not say whether it was exactly between 1 and 2.

Q. Were you in the machine?—A. Part of the time, and part of the time I was not.

Q. Now, at the time you saw these men first?—A. No; I wasn't in a machine at that time; I was on foot.

Q. You saw them go in?—A. Yes, sir.

Q. And they came out and drove away, did they?—A. They drove away; yes.

Q. Did they vote more than once at that place?—A. I could not say whether they voted some place else or not. I simply saw the machine going from place to place.

Q. You saw this machine come up to Fifteenth and Cass Avenue and four men were in it?—A. Yes, sir.

Q. Did you see them go in more than once?—A. I said it was in the neighborhood of Fifteenth and Cass.

Q. Did you see them vote more than once?—A. I saw them in two instances——

Q. Now, wait a minute. At Fifteenth and Cass Avenue——

Mr. FEIGENBAUM. Now, let her finish her statement.

Mr. BARRETT. I am not going to let her ramble. Fifteenth and Cass——

A. They come out of the first place I saw them go in to.

Mr. BARRETT. Now, wait a minute. You are an intelligent woman. I say at Fifteenth and Cass Avenue; did you see them vote more than once?

A. I did not say Fifteenth and Cass.

Q. Well, did you see them vote more than once?—A. Only once at that place.

Q. Only once at that place?—A. Yes.

Q. And you saw them go in?—A. Yes.

Q. And you saw them only vote once?—A. Yes. I saw them go in and come out. I took it for granted they voted; I did not see them vote.

Q. Didn't they get in the machine?—A. Yes.

Q. Did you follow them?—A. No. I followed them the first time, but not after that.

Q. I mean from Fifteenth and Cass, where you first saw them?—A. Yes.

Q. You did not follow them when they came out and got in the machine, did you?—A. Yes; the first time.

Q. Where did you follow them to?—A. To the next precinct.

Q. Where was that?—A. I can't tell you.

Q. Can't you give us some idea of the location?—A. No; I can't. I have an idea it is on Montgomery Street.

Q. Whereabouts on Montgomery?—A. I don't know that.

Q. Did you make any notation of it at the time?—A. No; I didn't, because I——

Q. Didn't make any notation of it?—A. No; I didn't. I tell you why I did that. I did it at the time for sort of an experience of seeing something I have never seen; and I didn't——

Q. You are going to stay here until I get the facts correctly if it takes all night, Mrs. Caulfield, if you don't answer my questions. I am not going to let you come here with wild, extravagant statements and get by with them without the privilege of going into it and thoroughly examining you to get at the truth or the accuracy of your statement, and I am going to insist that you quit evading and limit your answers to my questions.

Mr. Feigenbaum. I submit the witness had not undertaken to evade, and has stated as best she knows. When she has stated she don't know the exact street the witness can not answer, regardless of how anxious you may be to have her comply with your requet and regardless of how anxious she may be to testify.

Mr. Barrett. You say you followed these four men in the machine from somewhere on Cass and Fifteenth to a point somewhere on Montgomery Street?

A. I said I thought on Montgomery Street.

Q. Whereabouts on Montgomery Street?—A. I would not say. I think it was a little west of where the first place was. but I would not say, for the simple reason I do not know that district out there.

Q. Was it Jefferson and Montgomery or Second and Montgomery?—A. I can't say.

Q. You can't give us any idea?—A. I can not.

Q. How many blocks was it from the first place? You walked on foot, as I understand it.—A. I did not walk there; I went in the machine.

Q. Now, then, you followed them in a machine?—A. We had left the machine up the street a little piece, where I got out and went to the window and looked, and I went back and got in the machine.

Q. You saw them go in the second place on Montgomery Street?—A. Yes. I didn't say on Montgomery; I said in the vicinity of Montgomery.

Q. You don't know where?—A. No.

Q. And you can't give us any idea of the location?—A. No; because I was never there in my life before.

Q. And you can't give us any idea how far it was from the Fifteenth and Cass Avenue place?—A. Well, I don't know, but I imagine it would be a couple or three blocks, wouldn't it?

Q. A couple or three blocks; I don't know. I am asking you.—A. Well, I don't know; I am telling you.

Q. You are sure you went in the machine from Fifteenth and Cass Avenue to the place you think was around Montgomery Street?—A. I think so.

Q. First you think you were on foot?—A. I said part of the time I was on foot.

Q. And some men went from some place on Fifteenth and Cass Avenue and voted at some place on Montgomery Street?—A. Yes. I didn't say on Montgomery Street. I don't know the street. I said I thought it was in the vicinity of Montgomery Street.

Q. Was it a polling place?—A. I expect it was.

Q. Wasn't there a card out there indicating the ward and the precinct?—A. I did not notice it.

Q. Did it occur to you at that time that these men were going around from polling place to polling place voting?—A. I did not go and take any note of that kind.

Q. I say, did it occur to you at that time that these men were repeating?—A. Well, yes; it occurred to me at the time.

Q. It occurred to you at the time, and you saw them voting on Cass Avenue and go to some other place and vote again?—A. Yes.

Q. And you never took down the number of the ward or the precinct or the location, although you——A. I didn't just say I saw them vote. I said I saw them go to the polling place.

Q. What kind of house was this second place?—A. I think it was a store, too.

Q. Store?—A. Pretty dirty looking place.

Q. Was it a vacant place?—A. I can't tell you that; what it might have been before.

Q. You don't know what ward or precinct?—A. No.

Q. Do you know anything about the color of it, how it was painted?—A. No.

Q. You can't give us any idea?—A. No; I can't, because I was not interested at the time in it.

Q. You can't give us any idea of its location or the street number?—A. No. I think that I heard somebody say it was Montgomery Street, or I may have seen it. Of that I am not sure.

Q. How long were you in the fourth ward?—A. A very little while.

Q. How long?—A. Well, I don't think it was much more than an hour from the time I left home until I got back.

Q. An hour from the time you left home until you got back. Where do you live?—A. 1310 Bayard. I told you awhile ago.

Q. 1310 Bayard?—A. Yes.

Q. And you went from there down to the fourth ward and back and made these rounds?—A. I said I didn't think it was more than an hour. It may have been an hour and a half, and may have been longer, but it didn't seem so.

Q. How long did it take you to make the trip from your house to the fourth ward?—A. I think about 20 minutes.

Q. About 20 minutes?—A. I think so.

Q. How long did it take you to return to your home?—A. About the same time it took us to go down.

Q. So that would leave you 20 minutes in the ward?—A. Just about 20 or 30 minutes.

Q. What other places did you go to besides this Montgomery Street and Fifteenth and Cass?—A. I didn't pay any attention to any more.

Q. Did you go any other place?—A. No.

Q. In other words, you just saw two places?—A. Yes.

Q. Now, at this second place did you see these four men that you spoke of vote more than once?—A. I saw them go in, but I did not see them vote.

Q. You did not see them vote at the second place?—A. No.

Q. And you don't know whether they voted or not?—A. I don't know whether they did or not. They simply drove up and went in and in a little while came out.

Q. You don't know whether they voted or not?—A. I would not swear they did vote.

Q. You didn't see them vote?—A. I did not see them; no.

Q. Then you don't know whether they voted or not?—A. I didn't say I knew.

Q. For all you know they may have been precinct or ward workers going around making visits?—A. I don't think so.

Q. I say for all you know?—A. For all I know; yes.

Q. In the first place you saw them go into, did you see them vote?—A. Yes; I saw them vote.

Q. Did you hear them call out their names and receive a ballot?—A. I could not hear them, because I was on the outside.

Q. You could not see them?—A. I seen them through the window.

Q. Then you don't know whether they voted or not, do you?—A. I judged they did from what I saw.

Q. You judge they did from what you saw, but you did not see them vote?—A. I would call it voting.

Q. Do you call it voting just because people go into a polling place on election day?—A. They went in and did the same thing that everybody else does. I could see them through the window.

Q. What did they do?—A. They went in and called for ballots, and I seen them fix them.

Q. Did you hear them call for ballots?—A. No.

Q. Then you are mistaken in saying you heard them call for ballots?—A. I didn't say that I heard them call for them. I said they went through the performance that anyone else did in voting. They went in and they were handed a ballot.

Q. Why do you all the time say they called for a ballot?—A. I said they were handed a ballot, I think.

Q. You think they were handed a ballot?—A. I said they were handed a ballot. Naturally if they were handed a ballot they would vote it. I imagine you have to call for a ballot, don't you?

Q. Did you see them handed a ballot?—A. Yes.

Q. Who were they?—A. Do you know what they told me down there they were?

Q. I don't care what anybody told you. These four men that went in?—A. Yes.

Q. You saw them?—A. Yes. They were a tough-looking bunch, too.

Q. Well, they were a tough-looking bunch?—A. Yes.

Q. And you saw them somewhere around Fifteenth and Cass Avenue?—A. Yes.

Q. And then you saw them go somewhere else?—A. Yes.

Q. You didn't see them vote at the second place?—A. No. I didn't get up to the second place close enough to see.

Q. You don't know whether they were registered voters of that precinct or not, do you?—A. No, sir. I don't; but I imagine they were not.

Q. You don't know of your own knowledge whether they voted or not?—A. I would not swear they did in the second place; no.

Q. Now, Mrs. Caulfield, you testified on your direct examination that there was wholesale repeating going on in the fourth ward and that you saw it yourself; now, do you want to be understood——A. I did not testify to that.

Q. Do you want to be understood as saying now in cross-examination that there was wholesale repeating going on in the fourth ward?—A. I did not say it in the cross-examination, or in the first place. This is a whole lot worse than a women's meeting. We do give one another a chance to finish when they start something at our meetings. I said that some one said to me——

Q. Never mind what somebody else said. I want to know what you saw yourself?—A. Could I reach Mr. Bogy, and she said it was going on.

Q. Now, Mrs. Caulfield, don't try to get in the record what somebody else said. I want to know what you saw yourself.—A. That is what I saw. I saw these people going from place to place.

Q. Do you want to be understood now as saying that wholesale repeating was going on in the fourth ward?—A. Did I say that?

Q. I am asking you the question.—A. I don't know what I said.

Q. I am asking you the question. Now, do you want to be understood as saying that there was wholesale repeating going on in the fourth ward?—A. I didn't say wholesale; I said repeating.

Q. Do you want to be understood as saying that there was repeating going on in the fourth ward?—A. That is what I call repeating.

Q. Is that what you call repeating, what you described on cross-examination?—A. What, going from one place to another?

Q. What is your understanding of "repeating"?—A. Voting in more than one place.

Q. Do you understand that you can testify as to things you did not see or know of your own knowledge?—A. I don't know.

Q. In other words, as to the second place, because you saw these men there you simply surmised that they did vote?—A. I surmised that from the conversations I heard from people standing around.

Q. I am talking about what you saw yourself. Was there anything in their conduct or their actions that would convince you?—A. I might think what I wanted to, but still I would not swear to it.

Q. Then you are not sure they voted in the second place?—A. I would not swear to it; no.

Q. And you are not sure they voted in the first place, are you?—A. Yes; I think they did.

Q. You think so, but you didn't see them vote?—A. Yes; I did.

Q. You mean you actually saw them get a ballot and prepare it and put it in the ballot box?—A. Yes; and come out and get in the machine and go to some other place.

Q. Who were they?—A. How on earth would I know Hawes's Indians or Egan's rats when I see them down in the fourth ward?

Q. You don't know whether these four men that voted in the first instance were voters in that particular precinct where you say they voted?—A. No, I don't, Mr. Barrett, because I never saw them before.

Q. And the only instance that you saw them vote in the fourth ward was that one time?—A. Yes. But I judged from their actions——

Q. You just surmised, because they went to another place, that they were repeating?—A. Yes.

Q. Did you follow them any other place?—A. No.

Q. You were only 20 minutes in the fourth ward?—A. I would not say. It may have been—it may have been less than an hour I was away from home, and it may have been more; I can't say. If you haven't a special reason you won't keep track of the minutes like that.

Q. Now, Mrs. Caulfield, you spoke about a conversation you had with Commissioner Arnold?—A. Yes.

Q. Between Commissioner Arnold, Bogy, and yourself?—A. Yes.

Q. You and Bogy are cousins?—A. I believe you asked me that before, didn't you, and I answered you.

Q. I beg your pardon.—A. I beg your pardon, but you did.

Q. You and Bogy are cousins?—A. Through my mother's side. That is twice, I am sure, I answered that, and I won't answer that question again.

Mr. Feigenbaum. No; I asked you that.

Mr. Barrett. You owe me an apology.

The Witness. All right, I apologize.

Q. Now then, when did this conversation that you spoke about between Bogy and Arnold take place?—A. I told you that before. I told somebody before. It seems to me it was you.

Q. I am asking you the question.—A. It was about 5 minutes after 5 on Saturday evening, as we started out to eat.

Q. Saturday during the course of the recount?—A. Yes; if you want to call it a recount. I never would call it that.

Q. It doesn't make any difference what you call it. That is the technical name for it. It is called so in the statutes; it is designated so in the statutes—A. You can call it that if you want to, but I call it a discount.

Q. At that time you said that Commissioner Arnold said that he and Hawes were going to eat in the election commissioner's office, and a basket came in there for them to eat?—A. I didn't say that.

Q. What did you say?—A. I said the gentleman who had the basket said that.

Q. Who was the gentleman who had the basket?—A. I don't know. One of the men; he may have been a porter in the building. I said, "Isn't that mean for us to have to go out and them to have that lovely dinner," and he said this was for Mr. Dempsey and Mr. Hawes.

Q. Did you see Mr. Hawes around there at that time?—A. I left right away, and I didn't notice.

Q. Did you ever see Mr. Hawes eat there?—A. I don't know, for the simple reason——

Q. Listen, Mrs. Caulfield. You sat at the end of the table on the south side, didn't you?—A. Yes.

Q. And you have seen Mr. Hawes and Mr. Cummings and myself go out at 5 o'clock to dinner?—A. I never saw you eat there.

Q. You never saw us pass the door there?—A. Oh, yes; I did at times. I said I never saw him eat there. I simply told you what this man said.

Q. Didn't you see Mr. Hawes, Mr. Cummings, and myself go out that door at 5 o'clock every day?—A. Lots of times.

Q. You saw us go out that same Saturday evening?—A. Yes, sir.

Q. You never did see us eat there, did you?—A. No; I never saw you eat there.

Q. Now, isn't it a fact that meals were brought in every day for lunch and dinner, lunch at noon time and dinner at 5 o'clock for Mr. Claudius and Mr. Stansbury, the two chief clerks?—A. I couldn't say anything about what was brought in, or what was taken out before Saturday evening, for I never noticed. I went out the other door.

Q. Didn't Mr. Stansbury and Mr. Claudius, the two chief clerks, respectively Democratic and Republican, stay there during the entire time from morning until evening and never leave the place?—A. I believe they did, but I don't swear to that, either.

Q. Didn't they eat their meals there?—A. I don't know whether they eat their meals there or not.

Q. You saw meals being brought in?—A. No. I was so interested in getting a meal for myself I was not noticing whether others were eating.

Q. Didn't you see these meals brought in a basket twice a day and put in the room there?—A. Gee whiz! This is most aggravating. I told you I didn't pay any attention; I don't know what was brought in or taken out, only Saturday evening. You take a person over and over the same thing.

Q. I am asking you whether you did or did not?—A. I did not.

Q. Now, are you positive this man, whoever he was, said the meal that he was bringing in was for Arnold and Hawes?—A. Dempsey.

Q. For Dempsey and Hawes?—A. I understood him to say that.

Q. Who was that?—A. One of the janitors, or somebody around there, one of the employees; I couldn't say who it was.

Q. Do you know the janitor there, Mike, by sight?—A. No; I didn't pay any more attention to him than I did to the door knob on the door.

Q. What was your object in volunteering that statement on direct examination when you were not asked about it?—A. Well, to place the time that you asked me about this conversation with Mr. Arnold. I placed it through remembering wanting some of that dinner.

Q. No; I didn't ask you that question. Counsel for contestant in his direct examination asked you a question and you voluntarily answered, stating that—— A. You asked me what time it was?

Q. That somebody came in and said that the meal was for Dempsey and Hawes?—A. Yes; that is what he said.

Q. Why did you volunteer that statement?—A. To place the time. I believe Mr. Feigenbaum asked me at what time this was, and I recalled that so distinctly on account of wanting some of the dinner that was in that basket.

Q. Now, then, you have stated—— A. I surely wanted some of it; that is the idea.

Q. Now, you stated that a conversation was had between Commissioner Arnold and Mr. Bogy?—A. Yes.

Q. In which Bogy asked him if there wasn't a great deal of irregularity and fraud, and Arnold said he would not get anywhere because they had put the ballots in the boxes to cover up their irregularity?—A. Words to that effect. Those were not the exact words.

Q. And that it was the most wholesale fraud that he had ever seen?—A. It was horrible.

Q. And they simply put them in there, knowing if there was a contest they would get caught?—A. You didn't get that right at all.

Q. Let's get it right. A. He said, "Honestly, Glendy, what do you think of it? Don't you think it was absolutely reeking with fraud?" And he said, "Simply horrible." Mr. Bogy was sitting here on the end of the table and I was standing there and Glendy Arnold sitting there [indicating]. He said, "Simply horrible, the worst I ever saw." And he said, "I knew you would not gain anything in the recount because those fellows in the district, knowing the penitentiary was staring them in the face, fixed the ballots in the boxes to conform with the returns."

Mr. Feigenbaum. When you say "He" refer to somebody.

The Witness. Then, Mr. Bogy said, "Well, then, Glendy, you would have to testify to that, wouldn't you?"

Maj. Hawes. I object to what Mr. Bogy said. He is here to testify.

The Witness. Mr. Arnold said, "Yes; I would."

Mr. Barrett. Then Judge Arnold told Mr. Bogy that in your presence?—A. Yes, sir.

Q. That was along about 5 o'clock of last Saturday during the course of the recount?—A. The last day of the discount.

Q. And Arnold said that the recount showed that it was simply terrible?—A. Simply horrible.

Q. Simply horrible?—A. Yes, sir; the worst he ever saw.

Q. The worst he ever saw, and that he would not get anywhere in the recount?—A. No, he did not say he would not get anywhere. He said, "I knew you would not gain much in the recount."

Q. That these men knew the penitentiary was staring them in the face and they put the ballots in the boxes——A. Fixed the ballots in the boxes.

Q. Fixed the ballots in the boxes to conform to the returns?—A. To conform to the returns.

Q. And that is what Arnold said?—A. That is what Arnold said.

Q. And he said that to Bogy?—A. And if necessary, I will give you another oath on that to God.

Q. You are under oath now. And he said that to Mr. Bogy in your presence?—A. Yes, sir.

Q. And Bogy and you are cousins? Was anybody else present on that occasion?—A. No.

Q. Not a single soul?—A. No.

Q. And that was 5 o'clock Saturday?—A. A little after 5.

Q. Were there any of the clerks there?—A. Everybody had gone.

Q. And there was nobody in the office except you three?—A. That was all.

Q. And the dinner had already passed in?—A. The dinner had been taken in and the man that took the dinner had passed out.

Q. So there was nobody but you three in the office?—A. No.

Q. Was Claudius there?—A. I could not say positively; I think so.

Q. Was Stansberry there?—A. I think they were both there.

Q. Where were they?—A. I wasn't paying any particular attention, because you undestand at the time I did not know that I was ever going to be called upon to tell any of this stuff. I didn't know that.

Q. You never expected to be called upon to tell such a remarkable statement as you have testified to here?—A. There is nothing remarkable about that. That is exactly what he said.

Q. Now, was Miss Bobb there?—A. Well, if she was she was up in that little office of her's. I don't know. I would not say whether she was or not.

Q. If she was there and the door was open, she could have heard that conversation?—A. No. We were too far away.

Q. Where did you sit?—A. Down that way, by the telephone booth, not by the telephone on the wall, but by that telephone; that is, straight in front of the booth. There is a booth there, and we were standing directly in front of the booth.

Q. That is where you go into the other part of the room, isn't it?—A. Yes, just before you go into the other room.

Q. So that if Claudius and Stansberry were anywhere in that big room you could see them?—A. Well, you may have seen them if you had been paying any attention to them. I was very anxious to get out and eat. Nobody had started to eat their dinner yet.

Q. Nobody had started to eat their dinner yet?—A. No; because I was watching that basket.

Q. Now, on the occasion after this conversation you speak of with Mr. Arnold, when he left the room did he go with anybody, or did he go by himself?—A. I don't think he left. We went out of that door down there, and it seems to me he went back in the room. I am not positive.

Q. How long did he stay there?—A. How could I tell when we went out to get something to eat and did not come back until——

Q. Who did you go with?—A. With Mr. Bogy and Mr. Hartmann and Mr. Feigenbaum. We did not go with them; we met them when we got outside.

Q. Where did you go to?—A. Over there on Twelfth Street that evening, didn't we, that bum place. I don't remember sure.

Q. Did Mr. Feigenbaum go along with you?—A. He didn't go with us. I said when we got outside we met them.

Q. Did you go to lunch with Mr. Feigenbaum?—A. No; we didn't go with him; sometimes we ate at the same place, but we did not go together.

Q. You spoke about getting some numbers of some ballots whenever you got a chance?—A. Yes.

Q. That is, you took them surreptitiously?—A. No; I didn't do anything of the kind.

Q. Did you feel you had a right to take them?—A. Yes; I did.

Q. You felt you personally—— A. Yes.

Q. You understood that under the rule though you could not take them?—A. I did not understand the rule.

Q. What did you understand?—A. I thought that the understanding—my idea of what this affair took place for was to get an idea of those scratched ballots and the numbers.

Q. Now, let's get down to the rule first. Did you understand that under the rule you could not take the numbers of any ballots?—A. You understand I was not there the first day. I don't know what rules they made. I went in and did as I pleased as long as I had a chance to do it.

Q. You received no instructions?—A. No. I was not there when they gave that first instruction. Wasn't that the first day they gave that instruction?

Q. I am asking you.—A. I am asking you, because I don't know.

Q. Did you hear any instructions given by the election commissioners about the ballots, about not taking any of the numbers?—A. I heard that little talk in the room I told you about awhile ago.

Q. What talk was that?—A. The talk Mr. Dempsey made.

Q. What was it?—A. About not wanting the numbers of the scratched ballots taken. Mr. Bogy said, "I am the contestant and I demand and want them taken."

Q. And that occasion, was that when Dempsey made his statement in the room?—A. Yes.

Q. Where were you seated at that time?—A. Down at the table.

Q. That was the farthest south table?—A. Yes, sir.

Q. And Dempsey was in the large room when he made that announcement?—A. And he talked very loud.

Q. And he was in the large room?—A. Yes.

Q. And you say he talked very loud?—A. Yes.

Q. And everybody could hear him?—A. I don't know what everybody else heard. I am only telling what I heard.

Q. You could hear him where you sat?—A. Yes; but I got up and walked toward the door. I don't know a thing about what anybody else heard.

Q. I say you could hear him from where you sat?—A. When I heard him, when he started I got up and walked down toward the door to speak to Mr. Bogy.

Q. When Dempsey made this announcement were you at your seat at the table?—A. I was when he started, and then a rumpus started, just like that day you called down old Mr. Hartmann.

Q. How long did it take Dempsey to make his announcement?—A. What a foolish question.

Q. All right, if it is a foolish question please answer it.—A. I don't know. How long would it take you to ask these questions? I would say it took about five minutes.

Q. Let's get something in this record.—A. Five minutes, or 10 minutes. It surely didn't take him 10 minutes, did it?

Q. I am asking you; I am not on the witness stand.—A. I beg your pardon. This is the first time I ever was.

Q. How long did it take Dempsey to make that announcement loud?—A. I don't know. He was pretty—what is that Os says—hot under the collar? He said what he had to say real quick, very emphatic.

Q. Now, just tell us his exact words, as near as you can recollect?—A. Well, that there was to be no memoranda of any description taken of the number of scratched ballots, or the numbers of them; they were simply to be counted as cast. That was as near as I can repeat it.

Q. Is that all he said?—A. That is all he said at that time.

Q. That is when he said it loud?—A. Yes; when he said it to everybody in the room.

Q. That didn't take him long to make that statement, did it?—A. I don't think so; not in the mood he was in.

Q. You were seated at the last table?—A. When he started.

Q. Then did you get up?—A. I won't swear I was seated there. I think I had started up to see what Mr. Bogy was going to say, or to say something to him. There was somebody rapped a gavel; that is what attracted my attention; somebody rapped for order.

Q. Now, Mrs. Caulfield, let you and I understand each other. You first testified you were seated at the far table when Dempsey made that announcement.—A. I said when he started.

Q. Subsequently you undertook to say you were seated there when he started and you got up?—A. I got up when he rapped the gavel.

Q. And then you walked up there to hear him?—A. Yes.

Q. Then you were not seated down there at all when he made the announcement?—A. I was seated there when the argument started. You know there was a good deal of argument going on all the time.

Q. I am speaking of the time Dempsey made the announcement; were you seated in your seat or not?—A. No. I got up and left the seat when he got started. I told you there was an argument, for this reason; they had been talking; some question had come up at the table and I heard them talking about the ballots.

Q. Now, let's go into that. If you have got to shoot off at these angles I will run down each one of them until we get at the facts. At what table was this argument you spoke about? —A. I can't tell you that. It was in the other room. I could hear it, but I don't know who it was.

Q. Who was talking?—A. I can't tell you that, either.

Q. Where was Dempsey when the argument started?—A. I don't know. I think he was in his office. That was his room there; that was his office.

Q. So your idea, if I understand you right—— A. I think they went and got him to settle this question.

Q. If I understand this question rightly there was an argument started out in the other end of the room and after that argument they went into his room and got him?—A. I didn't say positively; I said I thought so.

Q. You thought so?—A. Yes.

Q. Then you are not sure about that?—A. You understand there is a whole lot of things that you think that you are not sure of, because if you don't know you are going to be called on to tell these things you don't take note of these things.

Q. Did Dempsey shout when he made this announcement?—A. Yes. He always shouts when he talks.

Q. You could easily hear him in the room where you were?—A. Yes; because he got so red in the face he had me——

Q. I am not talking about the time he was at the table; I am talking about the time he was in the other large room. When the argument started up in the other room you got up to see what the racket was?—A. I got up when he rapped the gavel, to see what it was.

Q. Gavel?—A. I don't know that it was a gavel; it might have been a club.

Q. That was when?—A. I think it was Thursday.

Q. That was Thursday?—A. I think it was Thursday, Thursday or Friday; I would not swear which it was.

Q. Now, on that occasion, Mrs. Caulfield, didn't Dempsey announce that the watchers were not to take the numbers of any ballots?—A. Yes.

Q. Except that which was incorporated in the report of the recount clerks?—A. Yes.

Q. That is what he said?—A. Yes. And then I went right ahead and did just as I pleased. I always do that.

Q. You heard that instruction and then you went ahead and did as you pleased?—A. Absolutely, every chance I got.

Q. Now, Mrs. Caulfield, did you see any of these instructions that were read there?—A. Did I see any of them?

Q. Did you see them or hear them?—A. I heard them; I did not see any. I did not know there was any written.

Q. You did not know there was any printed instructions of any kind?—A. No. That must have taken place the day before I got down there.

Q. Did you see any posted up in the office?—A. If they were there, I did not notice them.

Q. You did not see that in the office?—A. No. What would you call the office?

Q. Did you hear anything about an instruction of this character [reading]: "If there is any doubt as to whether any ballot has been properly marked the clerk shall place said ballot in the envelope for the decision of the board of election commissioners. Also place in this envelope all ballots that have no corresponding number on the poll books, and those that have duplicate or triplicate numbers. Also all other disputed ballots." Did you hear anything about an instruction of this character?—A. I did not hear anything, but that is exactly what they did.

Q. That is exactly what they did?—A. Yes; because they would take——

Q. Now, if there was any disputed ballots they put them into this envelope marked "disputed ballots"?—A. Yes.

Q. And they made a notation of them on the sheet prepared by the clerk and that was referred to the board?—A. Yes. That is where I got most of my records.

Q. If Bogy wanted to challenge a ballot as to its validity or legality, and they could not agree upon it at that table, it was then placed in the disputed envelope?—A. Either that or they would call somebody. Once Mr. Cummings came up, and he was very nice; and other times they called Mr. Dempsey. In fact, Mr. Dempsey came over there two or three times. That is why he raised so much—he kept saying he had more trouble with that table than any other. And in one instance there was fifteen ballots, and they were perfectly regular for Mr. Bogy, and they were marked "For determination." I believe you came along at that time and they discussed whether they should be passed or not, but they were not allowed; they were put in the disputed envelope.

Q. To be presented to the board of election commissioners for determination?—A. Yes.

Q. That happened in every instance where there was a dispute about the legality or validity of any ballot?—A. Yes.

Q. You understood any question about the legality or validity of any ballot means any dispute, didn't you?—A. I am not sure I know just what you mean, Mr. Barrett.

Q. So if the validity or legality of any ballot——A. You said one initial was perfectly legal, and there was an awful lot of those for Mr. Hawes.

Q. Well, I say it was noted on every sheet, wasn't it?—A. Yes. I have all those records.

Q. And if there was any doubt as to whether a ballot was properly scratched——A. Yes; that was discussed.

Q. That would be put in the envelope, too, wouldn't it?—A. Yes.

Q. And if you had any number of scratched ballots and there was doubt as to who the voter voted for they would be put into the envelope for the board of election commissioners to determine, wouldn't they?—A. Yes; most of them were. Some of them they decided not to argue over because nobody wanted any more trouble at that table.

Q. And I was called over to that table, too, wasn't I?—A. Yes.

Q. And counsel for contestee, myself, and Mr. Bogy could not agree, and I suggested they be put in the envelope and let the election commissioners decide it?—A. Yes.

Q. I did that in every instance, didn't I?—A. Well, yes; you were very nice when you came down to our table. I heard you at some of the other tables when you wasn't so nice.

Q. I was expressing my views openly and aboveboard, wasn't I?—A. Yes, down at the other table especially.

Q. You had at your table a man by the name of Sol Feigenbaum, didn't you?—A. Yes.

Q. Who was a brother of counsel for contestant?—A. Yes.

Q. You say a gentleman at the table gave you some numbers; it was Mr. Feigenbaum that gave you those numbers, wasn't it?—A. Well, no; it was not. It happened in sort of a funny way. I don't think he meant to do it. I said, "I would just love to have the numbers of those scratched ballots," and Mr. Bemish said, "I'll give them to you." And he called off eight to me.

Q. Did Feigenbaum give you any?—A. No, sir; he didn't.

Q. Feigenbaum prepared the sheets for you, didn't he?—A. No; he didn't. I wrote down—I made note of, you know, of how many scratched and how many one initial, and everything, and until I learned how to do it he showed me to what proper place it was to go, so it would look a little bit more systematic or orderly.

Q. Do you remember me going to the table and showing the watcher for Mr. Hawes how to make up the reports and give the number of ballots that was in dispute?—A. That was a lady, wasn't it?

Q. Yes; it was a lady. And Mr. Feigenbaum remarking, "Well, if the other side has it we will have to have the same thing," and he sat down and wrote it and gave it to you?—A. I say no, he didn't give it to me. I sat down and wrote them down.

Q. Do you deny that Mr. Feigenbaum made out a tabulation or a memorandum at the end of a recount in one instance and handed it to you in my presence?—A. No; I didn't say that, Mr. Barrett; you didn't get that right. I put that down in rough and he copied what I had put down in rough meekly on this paper just where it should go just as one of the gentlemen did for the other lady.

Q. Wasn't there complaints made that that table was the slowest table in the whole room, and they were behind?—A. Yes.

Q. And they were all day on one precinct?—A. But when they made that complaint I can tell you what I did. As they called off the ballots I took and put down the number of every ballot that was called.

Q. Do you remember what precinct that was that there was so much complaint about?—A. I think it was the eleventh precinct of the fourth ward.

Q. Now, they were talking about the ineligibility of a whole lot of numbers there, weren't they?—A. Yes; there was an awful bunch of them.

Q. Was there a notation made of them?—A. Yes.

Q. On the sheet?—A. Yes.

Q. I hand you the sheet of the fourth ward, eleventh precinct, and ask you whether or not there is any notation on that sheet about the ineligibility of numbers?—A. I don't know. I am very—I am very dauncey about some things. I don't know whether I could make out. I have my own copy.

Q. I am asking you from that memorandum?—A. It looks like a Chinese laundry list to me. I can't tell anything about it.

Q. Look at it and see if you can find anything in that report anywhere about the ineligibility of numbers. You said it was the eleventh precinct, ward 4.—A. I said I thought that was one of them.

Q. If it is not in there, then take the ward and precinct where it was?—A. If it was that ward I have it down in my sheet so I can tell.

Q. Have you got your sheets with you?—A. Yes, sir.

Q. Will you let me see them, please?

Mr. Feigenbaum. If the memorandum requested by Mr. Barrett is memorandum kept by this witness for Mr. Bogy's personal record we make the same objection we did before to this memorandum or file being given to counsel for contestee unless contestee will give us their memorandum likewise kept by their watchers.

The WITNESS. I say Mr. Glenn took down everything that happened, I am here to tell you.

Mr. BARRETT. Now, have you got any memorandum that you made of the recount of the wards and precincts?

A. Yes, sir.

Q. Have you the memorandum of the fourth ward, eleventh precinct?—A. Yes, sir.

Q. Will you let me see it?—A. That depends. I will if Mr. Feigenbaum says so.

Q. Will you or will you not?

Mr. FEIGENBAUM. I will say that I do not want the witness to turn over to Mr. Barrett any personal memorandum of our files, since the same request made by us has been repeatedly refused by Mr. Barrett. I requested the other day of Mr. Barrett and Mr. Hawes, contestee, to furnish us with memorandums kept by their watchers, and they refused it. They seek now to obtain memorandum kept by our watchers for our benefit in conducting this examination, and we refuse to permit Mr. Barrett to go over any part of our files, and this memorandum, we claim, is part of our files, until Mr. Barrett does give us all his memorandums; and I ask the witness not to turn that memorandum, which is part of our files in the case, over to Mr. Barrett at this time.

Mr. BARRETT. Now, then, Mrs. Caultield, after hearing this long statement by Mr. Feigenbaum, I will ask you if you will permit me to examine your memorandum made of the recount in ward 4, precinct 11?

A. Not after what Mr. Fe'genbaum said; no.

Q. You refuse to do it?—A. Yes; sure.

Q. Now, I want to ask you, Mrs. Caulfield, if you made a memorandum of the recount of each precinct that was made at the table at which you were situated?—A. As nearly as I could.

Q. Now, has the memorandum that you prepared, has it numbers of ballots?—A. Well, yes; some places.

Q. Now, you say you took numbers of ballots whenever you could?—A. I did not say whenever I could, but I said whenever I could get them.

Q. Whenever you could get a chance?—A. Not whenever I got a chance, but whenever I could get them; because I said to Mr. Benrish, in this way, "I would just love the numbers of those ballots," and there were eight, and they were very, very suspicious looking.

Q. What ward and precinct was that?—A. I don't know that I have that memorandum with me, but it seems to me it was the twentieth ward. Now, let me think. I am not positive about the precinct, but I have it at home. Haven't you got them there [addressing Mr. Bogy]?

Q. Now, Mrs. Caulfield, by referring to that memorandum you could tell the exact ward and precinct?—A. Yes.

Q. And you could tell the numbers of those eight ballots?—A. Yes.

Q. In which you say there is a similarity of handwriting?—A. Yes.

Q. Now, you say you have such a memorandum as that at home?—A. Yes; I have got it; I don't know whether it is at home or not.

Q. I say you have it?—A. Yes; I have it.

Q. And that is accessible to Mr. Bogy whenever he wants it, isn't it?—A. Yes.

Q. And it has been ever since the recount in that precinct was completed?—A. No; I don't think he knew I had it.

Q. I say he could have had it, couldn't he?—A. He could if he knew I had it. I don't think he knew I had it. The way I come to get it was this way: I told Mr. Bemish I would love to have those numbers, and he called them off to me.

Q. Now, did you call Mr. Bogy's attention to that ward and precinct you refer to?—A. I just got through telling you he did not know I had them.

Q. I am just asking you if you did?—A. I am just telling you he did not know I had them.

Q. I am asking you if you called his attention to that?—A. I told you I did not.

Q. Have you called his attention to it since that time?—A. I just told you——

Q. Just answer the question. Did you or did you not?—A. No.

Q. In any other instance have you taken a memorandum showing the numbers of any scratched ballots that you thought there was similarity of handwriting?—A. Yes; I did in some where I walked around the table and looked at them.

Q. And by walking around the table and looking at them you could get them. How often did that occur?—A. Quite often.

Q. How often?—A. I told you I already had the numbers on a piece of paper. As they were called off, and in that way I could check the two together. What difference does it make, as long as I managed to get them? I might have had a way of my own that you don't know about.

Q. They had what is called a ring sheet, didn't they?—A. Yes, sir.

Q. In other words it was printed numbers from 1 up to 1,200?—A. Yes, sir.

Q. And as the number of a ballot was called off they made a ring around the number, didn't they?—A. Yes.

Q. And then as these numbers were called off in that style you wrote down in lead pencil the number of the ballot?—A. Yes.

Q. In that way you had a record of every ballot in that precinct?—A. Yes; and every double.

Q. And then when you looked at these scratched ballots you thought they were in similar handwriting?—A. I got the numbers.

Q. I see. And then you could note it in that way very readily; is that right?—A. I didn't say that. I said I got the numbers.

Q. I say, you got the numbers and by referring to that sheet that you had containing the numbers of the ballots you could very readily tell it?—A. I can not answer that question that way. I am simply saying I got what I could get in my own way.

Q. All right. Let's go at it again.—A. You are wasting time, because I am not going to tell you any more.

Q. Let's not argue; answer the question. You wrote down the numbers of the ballots as they were called off?—A. Yes.

Q. So you had on your sheet numbers that were on the ballots?—A. Yes.

Q. You then saw these ballots as they were turned over, these scratched ballots. They were all together in a pile, weren't they?—A. Sometimes they were; I think they were; I did not say that was the way I got the numbers, though.

Q. And then when these ballots were turned over to be counted you could get the numbers of them?—A. I already had the numbers.

Q. I say you had the numbers of them?—A. Of all the ballots that were rung up; yes.

Q. How would you pick out those that were scratched?—A. I did not tell you how; I just simply got it done.

Q. I am asking you how you did it?—A. I don't have to tell you.

Q. I am asking you.

Mr. FEIGENBAUM. If you don't want to say so, don't say so.

Mr. BARRETT. If you don't want to answer the question just say so.

The WITNESS. I don't want to.

Q. At any rate, you got quite a number of the scratched ballots?—A. I couldn't, but I did.

Q. I say you could get it despite any ruling, off the side?—A. I didn't say I could; I say I did, some of them.

Q. You did get some of them; now, how many, approximately?—A. I couldn't tell you that without looking at my tally.

Q. By looking at your tally you could tell the exact precincts?—A. Yes, sir.

Q. And the exact numbers of the ballots which were scratched in which you state there was a similarity of handwriting?—A. Yes, sir.

Q. And if Mr. Bogy wants that information you are ready and willing to give it to him?—A. If he wants it; yes.

Q. Answer the question.—A. He don't know I had them.

Q. He knows that you have them now doesn't he?—A. He does now since we have been talking about them, of course.

Q. And you are ready and willing to give them to him at any time, aren't you?—A. Yes; I guess so.

Q. Now, Mrs. Caulfield, when you made up that information and you found anything that you thought was irregular in any respect, did you call the attention of Mr. Bogy or his counsel to it?—A. Sometimes I did and sometimes I didn't. It looked like it wasn't any use to call anybody's attention to it.

Q. Never mind arguing about that. When you called his attention to it did you do it orally or in writing?—A. When I called his attention to it I did it orally, and when I made memorandum of it I did it in writing.

Q. Did you give him a memorandum of it in writing at any time?—A. No.

Q. At no time did you give Mr. Bogy a memorandum of anything in writing, of anything you thought was irregular?—A. No.

Q. But you did convey orally to him information as to things that you thought were irregular?—A. Things I thought looked pretty bum.

Q. Things you thought looked pretty bum, as you call it. Did you make any notation of those things that you say looked pretty bum?—A. No.

Q. Did he make any complaint about it?—A. No. In fact we have not talked much about it; I have been too busy.

Q. I am speaking now of during the course of the recount?—A. Oh, no; not during the course of the recount. We never talked about it at all then.

Q. You never talked about that?—A. We never talked about that.

Q. And you have had these memorandas in your possession ever since the starting of the recount?—A. Yes.

Q. And he has never asked you anything about it?—A. No. He just asked me if I kept track of those things that I saw, and I said yes.

Q. He didn't ask to go over your sheets?—A. He didn't know I had them. I just said I ran across something here that didn't look all right and I kept an account of it, and he said all right, keep it.

Q. Did you want to get the numbers of all scratched ballots?—A. Well, I didn't care very particular about the numbers of all of them, just those that did not look right.

Q. Did you find any that did not look right?—A. I didn't find any that did look right.

Q. You didn't find any that looked right?—A. No.

Q. In other words, all of the scratched ballots you saw, none of them looked right?—A. That is the reason I took the numbers I did, because they didn't look right.

Q. By that you mean all the scratched ballots at your table, they all had a similarity of handwriting?—A. I don't say all; I say all I had numbers of.

Q. How many did you take the numbers of?—A. I haven't any idea.

Q. Can't you give us some approximate idea?—A. No.

Q. Was there as much as 100?—A. Yes; there was a much as that.

Q. Was there as much as 125?—A. I don't know. I wouldn't say just exactly. You mean in one precinct or all told?

Q. All told.—A. Gee whiz!

Q. How many?—A. One hundred or one hundred and twenty-five.

Q. Well, how many?—A. I don't know. I can't answer that without looking it up, but there certainly was a bunch.

Q. Well, approximately; can you by consulting your memorandum tell us?—A. You want to see what I have here, Mr. Feigenbaum?

Q. I am asking you if by consulting your memorandum you can tell us?—A. Yes; I can give you an idea.

Q. Can you do that by examining your memorandum?—A. I think so.

Q. Will you examine your memorandum and tell us as to the number that you found that was apparently in the same handwriting?—A. Yes.

Q. Will you do that?—A. Can't I send it to you in place of bringing it?

Q. I want you to testify to it.

Mr. Feigenbaum. She says she hasn't got that all here.

Mr. Barrett. She has got them at home. She has got some memorandums here.

A. Yes.

Q. Is that all your memorandums here?—A. No.

Q. What ward and precincts have you here?—A. Is it all right?

Mr. Feigenbaum. That is entirely immaterial, because you asked her the question a moment ago to give you an idea of how many all together, and she said she could not give you that unless she examined all of them.

Mr. Barrett. How many sheets have you got there; how many precincts have you got a memorandum of?

A. In the eighteenth precinct of the eighteenth ward there was two more ballots in the box than the——

Q. I am not asking you for that. That is all shown in the tabulation, and you are only wasting time. What I want to know is as to the number of scratched ballots in which you say there was a similarity of handwriting. I don't care for anything that goes in the record.—A. Well, now, here I have got the number of 20 scratched here for Hawes—Bogy scratched and Hawes written in—and it looked very much like the same handwriting to me. Of course, I am not a writing expert, you understand, but they impressed me that way.

Q. Do you know what ward and precinct that is in?—A. Precinct 18, ward 18.

Q. Ward 18 and precinct 18?—A. Yes.

Q. There is 20 there that appear to be in the same handwriting; is that right?—A. Yes; they impressed me that way. I would not swear to it.

Q. I say they impressed you that way?—A. Yes, sir.

Q. Now, did you lay those down and compare them one with the other?—A. The ballots?

Q. Yes.—A. They all examined the scratched ballots, you understand; they laid them out on the table.

Q. Did you make an examination and compare them for the purpose of determining whether or not they were in the same handwriting?—A. I looked at them with that idea in view; yes; of course.

Q. Did you examine all the hooks and the I's and the E's and the H's and the loops?—A. Some of them you did not have to look at very close; you could see it at a glance.

Q. At any rate you have got a complete list?—A. I did not say complete.

Q. As far as you have got it, you have a record of the numbers of ballots that were scratched?—A. Not all of them; I said some of them.

Q. I didn't say all of them. You have a record of a number of scratched ballots in which you say there is a similarity of handwriting; is that true?—A. I said it impressed me that it was written by the same hand.

Q. You have a record of such, haven't you?—A. A partial record. I did not say that is all.

Q. Mrs. Caulfield, let's go to it again.

Mr. Feigenbaum. Just a minute. I want to say now, since counsel has made that last statement, "Let's go to it again," that that seems to be very much in line with Mr. Barrett's conduct throughout this cross-examination. His sole purpose seems to be to incumber the record with immaterial matter for the pure purpose of delay and filling up this record with immaterial matter, which, before the congressional committee, will have no bearing whatever on this contest.

Mr. Barrett. Now, Mrs. Caulfield, you have a record, a private record, which shows a record of a number of scratched ballots that you made at the time of the recount in your possession?

A. I have a partial record.

Q. Of the things that you made a notation of?—A. Yes.

Q. In other words, of those you made a notation of at the time you have got a complete record?—A. I didn't say a complete record; I said partial.

Q. Do you understand me as saying that you have a complete record of the notations that you yourself made, not of the entire vote?—A. A complete record of the whole week's work, or just——

Q. I mean just what I say. Now, listen to my question and get it. You made notations from time to time of scratched ballots?—A. Yes.

Q. And you had the numbers of those scratched ballots recorded on some sheets?—A. Yes.

Q. That is complete as far as you took it?—A. Complete as far as I was able to do it.

Q. As far as you were able to do it?—A. But I won't say it is complete.

Q. But as far as you were able to take it and as far as you took it, you have those records now?—A. Yes.

Q. That is what I was getting at.—A. Did you put down about those two more ballots in that box?

Q. The record will show that. Now, did you want to take the numbers of all scratched ballots, whether they were for Bogy or Hawes, or anybody else?—A. I think I took the numbers of all the scratched ballots.

Q. Even the scratched ballots that were for Bogy?—A. Even those that were for him. That was my special desire, to take those that were for him. I wasn't so much interested in anybody else's scratched ballots.

Q. In other words, the ballots where Hawes's name was scratched and Bogy's was written in, you had a special desire to take the number of those?—A. That is right. I was anxious to know just how he really was running in the election.

Mr. Feigenbaum. You seem to misunderstand the question. Get the question right.

Mr. Barrett. You were not actuated by the desire to ascertain whether or not there was a similarity of handwriting, but it was for the purpose of seeing how they ran?

A. Well, I sort of connected the two; wouldn't you think so?

Q. You are not answering the question.—A. That is what I thought, if there were a great many ballots in the same handwriting, scratched ballots, you would naturally think there was a chance they got that many more votes. He was the only one on the Republican ticket——

Q. Let us assume there was 20 Democratic ballots and Hawes's name was scratched and Bogy's name was written in, did you take a record of those numbers?—A. Yes, sir.

Q. What was your object in taking a record of those?—A. I said because I particularly wanted to know just how he did run in that election.

Q. Then you would not be actuated by the desire to ascertain whether or not there was a similarity of handwriting?—A. Certainly, I had that idea in view.

Q. Then you had two objects; one was to see how he ran, the other was to see whether or not there was a similarity of handwriting in scratched ballots that were cast for Bogy; is that right?—A. Sure.

Q. In other words, you wanted to see whether or not anybody was writing in Bogy's name fraudulently, didn't you?—A. No. I wanted to see if they were writing in Hawes's fraudulently.

Q. I am speaking about the scratched ballots in which the name of Bogy was written?—A. There were only Republican ballots scratched.

Q. I am talking about Democratic scratched ballots?—A. There wasn't a terrible lot of them scratched.

Q. Did you find any scratched?—A. Yes.

Q. Did you take the numbers of those?—A. Yes.

Q. What was your object in doing that?—A. I didn't know that I could distinguish them or separate them.

Q. What was your object in taking the numbers of scratched Democratic ballots where Bogy's name was written in?—A. What would have been your object?

Q. I am asking you.—A. I don't know.

Q. Then you were not actuated by a desire to ascertain whether or not fraud was committed in Bogy's behalf, were you?—A. Yes; that was the idea, I think.

Q. In other words, you were looking to see if fraud was committed in Bogy's behalf?

Mr. Feigenbaum. Do you understand that question?

A. I say positively it was not done.

Mr. Barrett. I think she understands the question.

Mr. Feigenbaum. She has been here two hours, and she is a woman.

The Witness. I'll tell you what I did notice on the Democratic ballot——

Mr. Barrett. I don't want any speech. I will repeat the question. I want to be perfectly fair with you. There were scratched Democratic ballots as well as scratched Republican ballots?

A. I didn't notice so very many of those; I didn't take special note of those; what I wanted to see was how the Republicans voted.

Q. Did you take any memorandum of the scratched Democratic ballots?—A. I could not say I did. I didn't pay much attention. It was all right for the Democrats to have those ballots, but I wanted to know how the Republicans voted.

Q. It was all right for Democrats to scratch their ballots and vote for Bogy, wasn't it?—A. I didn't say that. I said it was all right for the Democrats to have their ballots the way they wanted them, but I wanted to see how the Republicans voted.

Q. And for that reason you undertook to take a record as far as you could of all the Republicans who scratched their ballots?—A. I did not undertake to do it; I did it.

Q. Mrs. Caulfield, did anything occur at the table at which you were situated as a watcher that would lead you to believe that the two Republican recount clerks were dishonest?—A. No; nothing occurred that made me think that any of those gentlemen at the table were dishonest.

Q. In other words, nothing occurred that would lead you to believe this either the Democratic or the Republican clerks at that table were dishonest?—A. No; they were on the level.

Q. You think they counted the ballots correctly and accurately?—A. Yes, sir; I think to their best judgment.

Q. And they were actuated only by their desire to do justice to everybody?—A. Yes, sir; to do justice to everybody.

Q. And there was no partiality shown?—A. Not by them at that table.

Q. I am speaking about the four gentlemen at that table, and the four gentlemen I mean were Mr. Bemish, Cassidy, Feigenbaum, and Conklin?—A. Yes, sir.

Q. Now, you said in your direct examination that every time a Republican name was mentioned or there was something about a Republican scratched ballot or Republican statement there was a commotion; just state what you meant by that statement.—A. I will tell you now, I will have to tell you in my own way; the atmosphere of the place was absolutely Democratic. Now, you will have to put that down or take it whatever way you want it. That is the way I felt down there. I felt as a Republican I had to sneak around and say what I wanted to say.

Q. In other words, it conveyed to you the idea that everybody in the establishment there were all Democrats?—A. Not everybody, but the majority of them were shown a great deal of partiality.

Q. In other words, if there were any Republicans there they were non ests?—A. They were very careful to say what they did very carefully, sort of sneaked around, like they were afraid to express themselves.

Q. Do you think Commissioner Buder, who was a Republican, was fair?—A. Yes; I think—I saw very little of him. At least he was sort of nonpartisan in his attitude.

Q. Now, what about Miss Emma Bobb, the stenographer and secretary? Did you think that she was fair?—A. Yes; I think she was fair.

Q. Now, as to Charley Claudius, the Republican chief clerk?—A. Well, I didn't have anything to say or do with them.

Q. Do you think he was partial one way or the other?—A. I didn't pay enough attention to him to really know.

Q. So as to him you can not express an opinion?—A. No.

Q. You could not say he was a Democrat, could you?—A. I said I could not say whether he was or not.

Q. You said there was a Democratic atmosphere there?—A. Yes, sir.

Q. At the table at which you were situated there was Mr. Feigenbaum and Mr. Bemish; I believe they were the Republicans, weren't they?—A. No. Mr. Bemish was a Democrat.

Q. Conklin is a Republican?—A. Yes; Conklin and Feigenbaum were Republicans and Bemish and Cassidy were Democrats.

Q. Bemish and Cassidy were Democrats. Now, those two gentlemen, was there anything Democratic in their attitude?—A. They were there to see that justice was done.

Q. I say was there anything Democratic in their attitude?—A. Not at that table, I told you.

Q. Do you know any Republicans there who were deputy election commissioners engaged in the recount who acted Democratic, as you call it?—A. I told you, and I can not express it any different; the entire atmosphere struck me as being one sided, partial.

Q. That is a conclusion. Now, will you tell us—will you please state the facts on which you based your conclusion?—A. What I felt? I had the feeling—I can't explain it any more than that—that they were partial to the Democratic side.

Q All right. Now, then, I want you to state some Republican that you think was partial or acted partial, either of the commissioners or the chief clerks, or the secretary, or any of them engaged in this recount that were Republicans, not Democrats?—A. I don't know. I don't know which were the Republicans and which were the Democrats. I just felt it in the atmosphere. And another thing, I noticed when any complaint was made at the tables——

Q. Now, just let me ask you this: Don't you know that the election board is evenly divided between Republicans and Democrats—two Republicans and two Democrats?—A. I heard it was supposed to be.

Q. Do you know, or do you not?—A. I have heard so since.

Q. Do you know, or do you not?

The Notary. You can answer that yes or no.

A. Can't I say I know it is supposed to be?

Mr. Barrett. Answer it and then give your explanation.

A. It is supposed to be part one and part the other.

Q. I am asking you do you know that the board is equally divided, two Republicans and two Democrats?—A. I do now; I didn't then.

Q. Do you know that the entire election force of the board of election commissioners is equally divided between the Republicans and Democrats?—A. No. How on earth would I know that?

Q. Well, do you know it?—A. No.

Q. Do you know that no man can go into the vault or take out ballot boxes unless there are two of them, a Democrat and a Republican; do you know that?—A. I heard that; yes.

Q. Do you know it?—A. No; I don't know it. I heard it. I don't know it for a fact.

Q. Do you know that the keys to the vault in which the ballot boxes are kept, one key is in the possession of the Republicans and the other key is in the possession of the Democrats? Do you know that?—A. I heard so.

Q. Do you know it?—A. How would I know it?

Q. Yes or no.—A. I don't know it.

Q. Then say you don't know it.

The Notary. And if you had heard so later on you can make that explanation after your answer.

Mr. Barrett. Now, can you name a single Republican in the office, commissioner or deputy, that you know of that acted partially to one side or the other during the course of the recount?

A. No; I can't try to pick them out now, but I felt it in the atmosphere. I am very susceptible to atmosphere.

Q. I see; you are susceptible?—A. To vibration.

Q. To atmospheric conditions?—A. Vibrations; yes.

Q. To vibrations?—A. And crossed wires.

Q. In other words, it is these vibrations that influenced you in determining whether or not there is partiality shown one way or the other; is that right?—A. I believe you have got that right.

Q. Now, you spoke about having a rough-house down at your table. Just what do you mean by that statement?—A. Well, I think it was rather rough for Mr. Dempsey to come down there and swear, and he got all red in the face and excited.

Q. You say he swore?—A. Yes; he certainly did.

Q. He swore there, and there was ladies there?—A. Yes.

Q. What did he say?—A. I don't think the lady was there that day. I think that Mr.—the lady had been removed and a gentleman brought there.

Q. What did he say?—A. If you are going to put it in the record——

Mr. Feigenbaum. If you don't care to repeat it, Mrs. Caulfield, you don't have to.

Mr. Barrett. You said he swore?

Mr. Feigenbaum. You may state that you refuse to do it.

The Witness. I don't like to go on record as using profane language.

Mr. Barrett. Then you refuse to state the exact words that Mr. Dempsey used that you say was swearing?

A. Yes.

Q. You refuse to do it?—A. Yes. It is not so awful bad, swearing.

Q. Maybe if we hear it it wouldn't be so bad, after we hear it.—A. It wouldn't be so bad, but if you put it in the record——

Q. You said that he swore; that is a conclusion?—A. Shall I tell him what he said?

Q. Yes.—A. When Mr. Feigenbaum says, "That looks like fraud," he pounded the table and says, "It is none of your damn business if the whole district shows fraud; you are here to count these ballots."

Q. What else did he say?—A. "You are not here to look for fraud. If you don't do better, you will be looking for another job this afternoon."

Q. And that statement was brought out from Mr. Dempsey because Mr. Feigenbaum, who was one of the deputy election commissioners, had refused to sign the recount?—A. With these fraudulent ballots that looked fraudulent counted with the regular ballots. He wanted them, you know—he wanted them put in the disputed ballots.

Q. He wanted what ones put in the disputed ballots?—A. Those three that were identical.

Q. What three?—A. Three that absolutely there wasn't a question of doubt in the world, spelled the same and written the same.

Q. Do you remember what ward and precinct that was?—A. No; I can't tell you now.

Q. Did you have the numbers of them?—A. I very probably did.

Q. And by reference to your memorandum you could tell those numbers?—A. Yes.

Q. Now, Mrs. Caulfield, on that occasion did not Commissioner Dempsey say to Mr. Feigenbaum, "I appointed you and it is your duty to keep a record of this recount, not represent Mr. Bogy or Mr. Hawes or anybody else"?—A. No. He never made such a statement.

Q. He never made such a statement?—A. He said that he was not there——

Mr. Feigenbaum. Mrs. Caulfield, you have answered the question. Just answer yes or no to the question.

Mr. Barrett. What was it, then, that Mr. Dempsey was complaining about?

A. Why, because he had been called to that table on account of these disputed ballots.

Q. Disputed ballots by whom?—A. Disputed by whom?

Q. Yes.—A. Why, at this particular time they were disputed by the—everybody at the table, everybody agreed they were identical; there was no argument between us about it.

Q. What was the nature of them?—A. The ballots?

Q. Yes.—A. There was three that was absolutely identical.

Q. That is, you thought they were in the same handwriting?—A. They were.

Q. I say it was your opinion?—A. Even the people at the table agreed with me.

Q. It was your opinion that they were; and who made the first objection?—A. I think I saw it first.

Q. You saw it first, and you made the complaint?—A. I just directed attention to it; yes.

Q. And were they put in the disputed envelope or not?—A. Yes; they were eventually.

Q. Now, when they were put in the disputed envelope they were referred to the board of election commissioners for decision and determination?—A. I expect that is what happened to them; I don't know.

Q. What Mr. Dempsey meant was that when there was a dispute it was not Feigenbaum's place to decide it, but that fact should be reported and passed upon by the board; is that right?

Mr. Feigenbaum. If you know what he meant.

A. I don't know what he meant. I told you that is just what he said.

Mr. Barrett. But in that case they were put in the envelope and referred to the board?

A. I think those three were, because he would not sign the report with them in it.

Q. Do you remember what ward and precinct that was?—A. No; I don't remember.

Q. You said something about not signing the report; what do you mean by that?—A. He said it looked fraudulent, and he would not sign the report unless those three were put in the disputed envelope.

Q. Then they were put in the disputed envelope?—A. Yes, sir.

Q. Who refused to put them in the envelope?—A. Nobody refused to put them in.

Q. Then, what was the dispute about it?—A. I didn't say they disputed it; they just discussed it. The fact of them being spelled H–a–w–s instead of e–s, it looked funny, and the men at the table, you know, even to them, and they were put in the envelope.

Q. Then there was no argument about it?—A. No, sir. Then they called Mr. Dempsey down to see what had to be done about it; because he had told them to do that.

Q. What did Dempsey do?—A. What did Dempsey do—do I have to tell that again?

Q. I am not asking you what Dempsey said, but what did Dempsey do?—A. He pounded his right hand on the table and said it wasnt' any of his dern business—only he didn't say dern—if the whole district went Democratic. He says, "These ballots look like fraud"——

Q. I didn't ask you——

Maj. Hawes. How could there be a dispute about three ballots which she says they all agreed should go into the envelope?

The WITNESS. When they called him down and they asked him what to do he says, "What is the trouble about now? This table gives me more trouble than any other table." And Mr. Feigenbaum says, "Look at these three; it looks like fraud." And Mr. Dempsey says, "It makes no difference if the whole district"——

Mr. BARRETT. And then he ordered them put in the envelope and certified to the board?

A. Yes, sir; they were put in.

Q. That is what you meant by rough house, is it?—A. I guess that is what I meant. It was pretty noisy for a few minutes.

Q. Now, you stated that Commissioner Dempsey stated that table gave him more trouble than any table in the room?—A. I stated he said it was the slowest table.

Q. He said it was the slowest table. And it was the slowest table, too, wasn't it?—A. Yes. They didn't seem to do their work for the first day, but after they got on to just what to do they did splendid.

Q. And for that reason it kept Dempsey looking after that the first few days until they got started right, didn't it?--A. I wouldn't say that. They called somebody, whether it was Dempsey or you or somebody else, down to settle discussions, or settle questions, rather.

Q. Then the table had to be looked after with care for the first few days a great deal, didn't it?—A. No; it didn't have to be looked after. They were simply slow because they hadn't got on to how to do the work. I will stop to tell you that there were a number of double—you know, doubles, they called them——

The NOTARY. Now, you are going into something else. If you don't know what he asked you, answer no.

Mr. BARRETT. Do you know whether or not Mr. Feigenbaum was called before the board because he was holding the table up there?

A. No; I don't know.

Q. Did you hear Mr. Dempsey talk to him about it?—A. No.

Q. You never heard Mr. Dempsey say anything to him?

Mr. FEIGENBAUM. She said no.

Mr. BARRETT. Now, refer to ward 4, precinct 11. You said there was six ballots that were identical; that is, that were in the identical handwriting: have you the numbers of those ballots?

A. I did not say identical; I said similar.

Q. I got the memorandum here as you said it; I wrote it down identical.—A. I don't know whether I have or not.

Q. You said they were identical. Did you take the trouble to examine those ballots, spread them out and compare them one with the other?—A. I don't know.

Q. You don't know. Then your examination was a cursory examination, a glancing one, was it?—A. I expect so.

Q. Now, you say you thought Dempsey was a Democrat?—A. Yes.

Q. And you afterwards learned he was a Republican?—A. Yes.

Q. What made you think he was a Democrat?—A. I don't know.

Q. You don't know. Mrs. Caulfield, you have been taking a hand in politics for a long time, haven't you?—A. For some little time; yes.

Q. How?—A. I was a volunteer for a good many years. This is the first time I was ever a regular.

Q. You took an active part in politics long before the nineteenth amendment was adopted, didn't you?—A. Yes, sir.

Q. A number of years?—A. Yes, sir.

Q. You have attended conventions, haven't you?—A. Yes, sir.

Q. And you knew that these election commissioners were appointed by the governor, didn't you?—A. No; I don't think I did.

Q. You don't think you did? And that they were confirmed by the Senate, did you not know that?—A. No; I did not know that.

Q. You didn't know that there was two Democrats and two Republicans on the board?—A. No; I didn't know that.

Q. Did you think that Dempsey was a Democrat on account of his name?—A. I think so, and his looks.

Q. In other words, you thought because he was an Irishman you thought he was necessarily a Democrat?—A. I thought—that is what I thought.

Q. And that is the only reason, isn't it?

(No response.)

Maj. HAWES. Looks like an Irishman and had an Irish name.

The WITNESS. And an Irish temper.

Mr. BARRETT. That is the reason you thought he was a Democrat, was it?

A. I don't know.

Q. Did you have any other reason for thinking he was a Democrat?—A. Well, I don't know.

Q. What other reasons then, if any, did you have for thinking that Dempsey was a Democrat?—A. I thought he showed partiality.

Q. You thought he showed partiality?—A. Yes.

Mr. BARRETT. Now then, when did he show partiality?

Mr. FEIGENBAUM. I want the record to show that the witness is almost fagged out, and that these things are being prolonged for the purpose of forcing this witness to answer questions as the contestee wishes them, or, rather, as his counsel wishes them, and that the witness has just been advised that her mother was very much worried over her, and is ill, and this cross-examination has continued almost four hours on immaterial matters.

Mr. LEON FEIGENBAUM. I want to have it further noted that counsel for contestee has three times during this cross-examination threatened the witness and attempted to intimidate her by stating that she had to answer the questions the way he has asked her, otherwise he will keep her here all night.

Mr. BARRETT. I deny that last statement that I threatened the witness——

Mr. LEON FEIGENBAUM. That he will keep here here until she does answer.

Mr. BARRETT. Or intimidate her in any way. If they desire to have this deposition continued until to-morrow morning, there will be no objection on my part. If the lady will indicate that she is tired, or that she is exhausted, or that she is worried on account of her mother, I will gladly consent that the further taking of this deposition be continued until to-morrow morning, or to-morrow afternoon, to suit the lady's convenience; and it is not my object to tire or to exhaust this witness, or to browbeat her or to threaten her; and I resent the insinuation made by counsel that I am trying to get her to answer questions the way I want her to, and that I am trying to intimidate her. What I said was this: That the cross-examination would be continued until the witness would give us a clear understanding as to what she meant by statements made by her in direct examination. This cross-examination is necessarily long, caused by the witness's refusal to respond to the questions asked. Invariably, in answering a question she would interject another element, which necessitated an explanation, and counsel was compelled to follow up and draw these matters out in cross-examination. The matter is not agreeable to counsel; it would be very pleasant for me to have concluded this examination one hour ago and gone home; but disagreeable as it may be to me, and as much noise as the counsel for contestant may make, I must perform my duty and will continue to do so until we can get a clear and intelligent statement from the witness. I want to say to this witness that if she is tired or exhausted or worried or ill, that if she will inform me I will gladly adjourn the matter. But an accusation has been made here by this witness repeatedly that there was an unfair atmosphere and attitude taken by the board of election commissioners or its deputies, and that they were partial to the contestee as against contestant. In these matters we have insisted upon my right of cross-examining the witnesses and requesting them to designate the person or persons who were partial, and what they said, and also designate time and place.

Mr. FEIGENBAUM. The witness has undertaken, I believe, to answer every question the best way she knows. And if contestee is sincere about wishing to give her ample time on another occasion to explain anything that she may want, and because of the fact that the witness has already informed us she must leave town to-night and can not be here to-morrow, and has said that two or three times, I ask if contestee is sincere in his desire to complete said deposition at another time that they do so sometime next week.

Mr. BARRETT. We won't take it on our time; I'll tell you very promptly that we won't do that. Do you suppose we are going to waive any legal rights we have in the premises just simply because you are making a threat and a grand-stand play?

Q. Mrs. Caulfield, are you tired or exhausted?—A. I can't come to-morrow.

Q. Just anwer the question. Are you tired?—A. Certainly.

Q. Are you anxious to go home?—A. Very, very.

Q. Do you wish the depositions to be continued now?—A. Well, I can't come to-morrow morning?

Q. Can you come to-morrow afternoon?—A. No; nor Saturday, nor the next day.

Q. Where are you going, Mrs. Caulfield?—A. I don't know yet.

Q. Are you going out of town?—A. Yes; I am going out of town.

Q. Is it on important business?—A. Yes.

Q. Can't your business wait for a few hours?—A. No; utterly impossible; it is sickness that I am going on.

Q. Why not come in the morning and complete your deposition?—A. Utterly impossible to come to-morrow.

Q. Mrs. Caulfield, would you like to have a recess for a half hour or an hour to rest up?—A. That depends on how much longer you are going to keep me here.

Q. I will promise you this: It will depend entirely upon yourself. If you will just confine your answers to my questions we will get through in a short time.

Mr. Feigenbaum. Mrs. Caulfield, just answer the questions.

Mr. Barrett. Then if the witness can not come to-morrow, I will suggest that we proceed with the examination.

The Witness. I tell you I can not possibly come to-morrow or the next day.

Maj. Hawes. You prefer to go on to-night?

The Witness. Yes; if it is not going to be four hours longer. I would rather stay.

Mr. Barrett. Now, then, can you name a single person who is a Republican in the election commissioner's office that appeared to you to be partial in any way?

A. I don't know whether I can or not.

Q. Just say yes if you can; and if you can't, say you can't.—A. I don't know.

Q. You don't know of anyone?—A. No.

Q. Well, can you point to any instance or recall any incident where any one of them seemed to be partial?—A. I believe now it was just general.

Mr. Feigenbaum. Well, that answer may be stricken out.

Mr. Barrett. Mrs. Caulfield, you can not recall a single Republican who acted, so far as you could see, partially, nor can you recall a single incident that seemed to you to be partial on the part of any Republican? Just answer that yes or no.—A. I can not recall it just now.

Q. Then your answer to my question must be yes or no, that you can not recall the name of any Republican or any incident.—A. I can not recall at this time.

Q. Now, Mrs. Caulfield, during the course of your direct examination you referred to Hawes's Indians?—A. Yes.

Q. Do you know any such things or individuals called Hawes's Indians?—A. I don't know any of them, certainly not, personally; but I certainly heard of them—from hearsay.

Q. Did you hear of them within the last 16 years?—A. Yes; that is the only time I ever did hear of them.

Q. When did you hear of them?—A. Almost ever since I can remember.

Q. Did you hear of them in the campaign of 1916?—A. I can't say that, because I was not so active in that campaign.

Q. Did you hear of them in the campaign of 1918?—A. I can't remember that, either.

Q. Now, then, if you did not hear of them in the campaign of 1916 or 1918, what did you mean by saying you heard of Hawes's Indians?—A. Well, because I heard them referred to during this campaign.

Q. You heard them referred to in the campaign of 1920?—A. Yes; I will say that if you keep me here all night.

Q. What do you mean by Hawes's Indians—A. I don't know; I suppose a crowd of Hawes's followers.

Q. What do you mean by the use of the word "Indians"?—A. I don't know, except I have heard of Hawes's Indians ever since I can remember.

Q. You said you did not hear of them in 1916 or 1918.—A. I was not active at that time.

Q. How about the campaign of 1914?—A. No.

Q. 1912?—A. No.

Q. 1910?—A. No.

Q. 1908?—A. No; I don't remember anything about what happened in those elections.

Q. Then what year did you hear that expression used?—A. I have heard of Hawes's Indians ever since I can remember. I am not going to say I didn't if you keep me here all night.

Q. How far back do you remember that?—Ever since I can remember taking an active interest in politics.

Q. When was that?—A. I don't remember just how long ago, but ever since I can remember.

Q. Give us some idea?—A. No; I can't.

Q. Did you hear it in the campaign of 1916?—A. I don't know anything about that.

Q. Now, during the campaign of 1920 did you hear a single Republican speaker mention it, or did you see a single item in the newspapers referring to such a thing as Hawes's Indians?—A. The paper did not refer to Hawes's Indians, but it did refer to the method—to the days of Hawes and Butlerism.

Q. When?—A. Just before the election.

Q. When did you see it in the paper?—A. Shortly before the election.

Q. What paper did you see it in?—A. Didn't we keep that paper [addressing Mr. Bogy]? I think it was the Times.

Maj. Hawes. Now, let me ask the lady some questions and I think we will get along rapidly.

Q. You referred to Hawes's Indians in your direct examination. I want to ask you if you ever saw a Hawes Indian?—A. No; I don't know, unless——

Q. Now, I beg of you not to start it, because I will stay with you, too. Did you ever see a Hawes Indian?—A. I don't know.

Q. I ask you if——

Mr. Feigenbaum. Answer yes or no. If you saw one, say so; and if you didn't, say no.

A. Well, no.

Maj. Hawes. Did you see any reference to Hawes's Indians in any newspaper in this town during this campaign?

A. No.

Q. Did you hear a speaker refer to Hawes's Indians during this campaign?—A. No; not a speaker.

Q. Then you don't know what a Hawes's Indian is. I am going to get through rapidly.—A. No; I don't think—I can't say that I know from personal contact.

Q. Well, do you want to withdraw that statement—that you saw some Hawes's Indians in the fourth ward, or was that merely an expression? Do you want to withdraw that expression at this time?

(No response.)

Mr. Feigenbaum. You have my permission to do so, if that is what you want.

The Witness. I don't care; if you want to.

Maj. Hawes. Are you willing to withdraw that statement?

The Witness. I am willing to; yes.

Maj. Hawes. That is all

(Signature waived by agreement.)

At this point, 8.30 o'clock p. m., I continued the further taking of these depositions until to-morrow, Friday, January 28, 1921, to be resumed at 10 o'clock a. m. on that date at the same place.

Frank B. Godzki,
Notary Public.

My commission expires 9th day of September, 1921.

Pursuant to adjournment, as above stated, on the 28th day of January, 1921, between the hours of 8 o'clock in the forenoon and 6 o'clock in the afternoon, at the same place, I continued the taking of said depositions, as follows, viz:

ISAAC SIEVERS, of lawful age, being produced, sworn, and examined on behalf of the contestant, deposeth and saith:

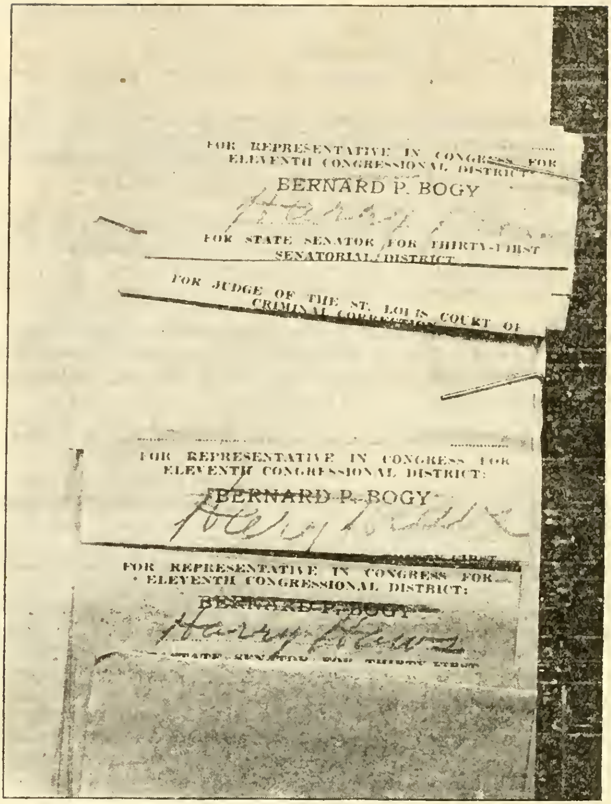
Direct examination by Mr. Feigenbaum:

Q. Will you please state your name?—A. Isaac Sievers.

It is admitted that these photographs, marked "Contestant's Exhibits B and C," are correct photographs of ballots photographed in the office of the election commissioners in St. Louis.

(Said contestant's Exhibits B and C are herewith attached and returned as a part of these depositions.)

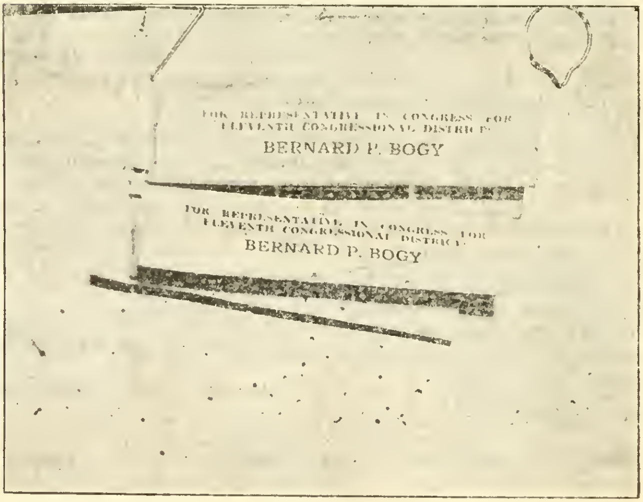
CONTESTANT'S EXHIBITS B AND C.



FOR REPRESENTATIVE IN CONGRESS FOR
ELEVENTH CONGRESSIONAL DISTRICT
BERNARD P. BOGY
[illegible]
FOR STATE SENATOR FOR THIRTY-FIRST
SENATORIAL DISTRICT
FOR JUDGE OF THE ST. LOUIS COURT OF
CRIMINAL CORRECTION

FOR REPRESENTATIVE IN CONGRESS FOR
ELEVENTH CONGRESSIONAL DISTRICT:
~~BERNARD P. BOGY~~
[illegible]

FOR REPRESENTATIVE IN CONGRESS FOR
ELEVENTH CONGRESSIONAL DISTRICT:
~~BERNARD P. BOGY~~
Harry Hawes
FOR STATE SENATOR FOR THIRTY-FIRST



FOR REPRESENTATIVE IN CONGRESS FOR
ELEVENTH CONGRESSIONAL DISTRICT
BERNARD P. BOGY

FOR REPRESENTATIVE IN CONGRESS FOR
ELEVENTH CONGRESSIONAL DISTRICT
BERNARD P. BOGY

JOHN J. HURLEY, of lawful age, being produced, sworn, and examined on behalf of the contestant, deposeth and saith:

Direct examination by Mr. FEIGENBAUM:

Q. What is your name?—A. John J. Hurley.

Q. Where do you reside, Mr. Hurley?—A. 3942 Evans.

Q. 3942 Evans Avenue. What is your occupation?—A. Assistant to the board of election commissioners.

Q. You are now employed by the board of election commissioners in St. Louis?—A. Board of election commissioners.

Q. What is your politics, Mr. Hurley?—A. I am a Republican.

Q. You are one of the Republican assistants?—A. Yes, sir.

Q. Were you engaged, or rather employed in that office during the recent recount in the Bogy-Hawes contest extending from January 12 to 19?—A. Yes, sir.

Q. And how were you engaged there—what capacity during that recount?—A. Counting ballots.

Q. Counting ballots?—A. And checking them.

Q. Were you a clerk at any of the tables?—A. Yes, sir.

Q. Can you tell us what table?—A. I was a clerk at No. 6 table the first couple of days, and they made up a new table. and I was transferred over to the new table. I don't know what the number of the table was. It was the last table then.

Q. Now, Mr. Hurley, did you do any other work around there besides act as a clerk?—A. Not during the recount.

Q. What I mean is, did you carry any of the poll books to the table?—A. That was all included in the work. As soon as we would finish the books, we would carry the books from the table where we recounted the ballots to the counter, or to window—let's see, 23 or 25—window 23 and 25—we carried the general books to that clerk and Mr. Kampe took the books and replaced it in the vault and brought us out a new book where our work was to start new.

Q. Now, Mr. Hurley, during the progress of that recount, do you recall any instances where any poll books taken from the vault had the seal already broken?—A. There was one poll book, I believe it was in the fourth ward—I am not sure—the fourth or eighteenth—it was one of the first wards we worked on when I was working at the first table that had a large number of ballots in the box and it wasn't—the ballots wasn't folded properly by the judges and clerks of the polling place of that precinct and that caused the box—the seal of the box—by the box being bulged out, it caused the seal to break—to force open. It wasn't split—just the glue or liquid that they put on these flaps didn't hold.

Q. Just simply loosened?—A. Loosened it.

Q. There was nothing broke across where the lid joins the box?—A. No, sir. There was a box, I believe, in the twentieth ward—I don't know what precinct—I think it was the twentieth ward; I am not certain—I worked on—I didn't pay very much attention to the box. We got them and had to give them up. It wasn't any paid piecework, so I don't remember just what precinct it was. The seal after it was pasted on. why it was right at the head of the box, and it was split right across. I don't know if——

Q. Split right where the bottom of the lid joined the box?—A. Split right where the bottom of the lid joined the box, yes.

Q. And how was that split, was it like a cut, or what did it appear to be?—It wasn't cut, because it was too rough to be cut.

Q. Ragged edge?—A. Ragged edge.

Q. But it wasn't simply loosened from the paste or anything like that?—A. No; the paste was on top, and it wasn't sealed with wax.

Mr. BARRETT. Let the record show that Mr. Cornelius L. Bauer, counsel for contestant, now appears at the hearing.

Mr. FEIGENBAUM. Now, Mr. Hurley, you acted as Republican clerk at those two tables?

A. Yes, sir.

Q. Now, Mr. Hurley, you were there present during the entire recount from the beginning?—A. Yes, sir.

Q. Do you recall instructions being read by the several election commissioners—by Judge Arnold first and then later some further instruction given by Mr. Dempsey?—A. Yes.

Q. Now, there is no dispute about these instructions of Judge Arnold, so I am not going to ask you about them. But, with reference to the instructions given by Mr. Dempsey, one of the commissioners, what was the first instruction or set of instructions that Mr. Dempsey gave or announced that you heard?

Mr. Barrett. Let us fix the time.

Mr. Feigenbaum. What time did he first issue any order?

A. I don't know just exactly what day it was, but we were working a couple of days; maybe it might have been the third day that Mr. Dempsey—the second or third day Mr. Dempsey came out and made the remark that the watchers—I believe he said first the watchers and clerks wouldn't be permitted to make any notations of the ballots unless they were disputed ballots and placed in the disputed envelope to be brought before the board of election commissioners to be discussed before that board. I didn't hear him make any other remark that day, and I believe one evening after that, why, he—at the table next to us, the fourth table, the last table in the office—I don't know who was working on that table now—there was a one-armed man there, a watcher, and one of the ladies was watching and we wasn't paying—I wasn't paying particular attention to who the argument was placed right at, but I heard Mr. Dempsey tell one of the clerks, or one of the watchers, if they didn't care to do just how they were ordered to do that they would get somebody else and place them at that table. I don't know if he was talking to the watchers or clerks, or who he was talking to.

Q. Did you hear anything as to what the clerks were to do from that remark of Mr. Dempsey?—A. No; not outside of our instructions. When we received our letter with instructions on it Judge Arnold stated the same that was on the instructions. I believe he made one change. Instead of having the duplicate ballots, if there was—if there was enough ballots in the box to bring out the same number of ballots in the box there was on the poll books we counted the duplicate ballots, but if the ballots ran over that number that was on the poll books we placed the number on our sheets and did not count the ballots. I believe that the argument there at that table was something about a scratched ballot; there was a scratch through the name, or something, that was not very plain, and they wanted to count it and they was told not to count it, or something of that nature. Then—I don't if it was that night or the following night that Mr. Dempsey made the same remark again that if the watchers did not quit making notations that he would see the counsel of the contestant and the contestee, and that the watchers—he further stated, then, that there was to be no remarks taken from any of the ballots. I believe Mr. Bogy brought up the argument about that time—something about that that wasn't the understanding that they had at the board meeting, that he had to have these notations in order to make a photograph of the ballot or of the scratches, or something of that sort. I was sitting back at that far corner, and I didn't get as much of the argument as the people out in the front. The arguments weren't placed right at our own table, because we didn't have a dispute all the time we were working.

Q. But do you recall Mr. Bogy's statement following Mr. Dempsey's instructions of Friday morning?

Mr. Barrett. Just a minute. I object to that question as pure hearsay. Mr. Bogy, the contestant, is present and he will testify himself as to what he stated, and any statements of this witness would be pure hearsay.

Mr. Feigenbaum. Withdraw the question, then.

Q. Mr. Hurley, how long have you been employed in the office of the election commissioners of St. Louis?—A. I couldn't tell you exactly. I was in the Army and before I went in the Army I was in the office, and after I came out of the Army I went back to the office. I should judge I am in the office around about two years.

Q. About two years?—A. About three years, I believe, this month. I believe it has passed about three years now.

Q. Have you witnessed other contests held in the election commissioners' office, or, rather, recounts taken in contests?—A. No; I wasn't on the recount. I wasn't on that work, but I was employed in the office at the recounts.

Q. I will ask you whether, in your opinion, from what you saw of the progress of the recount, whether you believe the recount conducted in the election commissioners' office was entirely regular, and if not, point out any irregularities?

Mr. Barrett. I object to that as compared with any other recounts, because this recount was conducted under a stipulation agreed to and signed by the parties to this contest and their counsel, and that a comparison of other recounts that were directed on an order of recount by the court, which specifically set forth the things that are to be examined and certified to by the board, isn't even analogous to this case. It specifically sets forth in the stipulations the things that the contestant or contestee desires, and it is governed entirely by this stipulation and not as has been conducted heretofore on writs of recount by an order of the court, which specifically sets out the things desired that the board was to certify to, unless it can be shown that the previous recounts which this witness observed were conducted under the same order and same style as this contest was. But I want to be understood that my objection does not go to the witness testifying to any misconduct or violation of the instructions so far as the recount is concerned, but my objection goes as to comparing it with others.

Mr. Feigenbaum. I am going to adopt part of the suggestions of counsel and change my question to read: Mr. Hurley, will you please point out any irregularities that you noticed with reference to the conduct of the recount, bearing in mind what you heard at the time the contestant and contestee reached an understanding in the office of the election commissioners as to what was to be done and what memorandum was to be kept track of in the recount?

Mr. Barrett. I object to that question as calling for a conclusion. I object to it also because it assumes that the witness has knowledge of what transpired heretofore and because it assumes there were irregularities, and I object to it because the question is leading and suggestive.

(Question read.)

A. Why, I was in the front office of the secretary to the secretary of the board's office, and it was about the middle of the meeting, I presume, and I heard the members of the board asking Mr. Hawes and Mr. Bogy if it was agreeable about different things, and I heard Mr. Bogy make the remark that if it was agreeable with Mr. Hawes it was agreeable with him that they would make notations that they could use before the board, and the only irregularity that I seen, that they say that Mr. Dempsey made statements outside that there would be no notations made by the watchers and Mr. Hawes, or Mr. Bogy couldn't make notations from every table—there was too many tables for both of them to watch, so the watchers would be the only ones allowed—would be the ones to make the notations of any irregularities at that table, unless they held up the count long enough to get Mr. Bogy and Mr. Hawes to get them notations.

Mr. Feigenbaum. Were you present, Mr. Hurley, the day before the recount commenced, when this discussion came up as to what memorandum Mr. Bogy wanted kept and as to any photographing that was to be done?

Mr. Hawes. I object to that question, unless he shows that the witness was in the board room at the time of the discussion—where he was and the hour of the day.

Mr. Barrett. I also object to it for the further reason that the entire contest is governed by a written stipulation signed by the parties, and all the things that the parties desired and agreed to are contained in that stipulation, and the terms of this written stipulation can not be varied or contradicted by oral discussion or understandings that took place prior to the signing of the stipulation. It is an attempt to contradict the terms of a writen instrument by verbal testimony.

A. I was not in the board room at all. I was in the room outside of the board room and the doors were open, and the questions were clear outside and you could hear remarks—everybody was standing around the doors listening to the arguments. I happened to be present there at that time and I heard the argument. That is all. I didn't stay there to hear the whole question. I had other work to do.

Mr. Feigenbaum. Now tell us what arguments you heard.

Mr. Barrett. Well, I object to that. Taking parts of it. The witness testified he was in the other room the whole time and only heard parts of it, and it is also an attempt to gain by partial hearing—to contradict by oral testimony the terms of a written instrument.

The Witness. Answer this?

Mr. Feigenbaum. Now, answer it.

A. Why, I heard Mr. Bogy make the remark that he wanted ballots that—certain ballots that were scratched, he wanted to have a chance to make a photograph of the scratched ballots, so he would know what he was going about. I don't know whether they agreed upon that or not, but I heard him make that request.

Mr. Feigenbaum. What was your understanding when the recount started as to whether or not any one excepting the judges and clerks at the tables had a right to demand that a ballot be put into the disputed envelope?

Mr. BARRETT. Why, I object to that as leading and suggestive and an attempt to vary the terms of a written instrument by oral testimony.

A. Well, I was under the impression that the watchers were to act the same there as they were in the polling place. If they saw any irregularity, that they call the judge's and clerk's attention to it and have a note made of it in the remark column or rejected ballot, or place it in the disputed envelope and let the board act on it. That was my understanding when we started to work; that is, everything went on at our table—went into the envelope. The only dispute we had was placed in the envelope and sent before the board, if we couldn't agree on it. We had no watchers at the last table we were at and we had watchers at the first table.

Mr. FEIGENBAUM. Now, was that carried out throughout the recount or was that form of practice changed with reference to anybody else excepting the judges and clerks having the right to put a ballot in the disputed envelope?

Mr. BARRETT. Well, I object to that question because it assumes that anybody else but the assistant election commissioners could put the ballots in.

Mr. FEIGENBAUM. I just want to get what his understanding was at the outset.

Mr. BARRETT. He didn't say that; he said they could call attention to it, and the clerks would.

Mr. FEIGENBAUM. That amounts to the same thing.

Mr. BARRETT. No; it don't.

Mr. FEIGENBAUM. Mr. Hurley, give us your own understanding as to what the rights of the watchers of contestant or contestee or their counsel were with reference to ordering ballots put into the disputed envelope?

A. Well, the judges and clerks—after they had the ballots all set out—they had them separated, the scratched from the straight ballots, why, in counting them scratched ballots, if they found a ballot that couldn't be counted, or a ballot that they couldn't agree on, the watchers looked at the ballot—I don't know if they offered suggestions at every table, but at the table we were at, we took their suggestions and if they agreed—if the two watchers agreed the same as we did, that the ballot couldn't be counted for neither one—if the scratched ballot couldn't be counted, or if the name was scratched out of it, or if there was a dispute we could settle at the table, we knew the board wouldn't take any different steps than we would take, why, we would put the ballot back in the box and counted the ballot as a scratched ballot—no vote; but if there was a dispute there, that we couldn't come to an agreement on it, we placed it in the disputed-ballot envelope and the watchers made a note of it, stating that on their notations. I forgot the boy's name, who was at my table—he was a stranger and he made a notation of that. I believe we had a ballot there that Bogy's name was scratched on, and James T. O'Brien's name was written in, and the young fellow that was watching figured that that vote should be counted for Mr. Hawes, because it was that man's feeling when he went in there he wanted to scratch Bogy and vote for Hawes, but he wrote James O'Brien's name in; so we didn't ask about it, we put it in the disputed envelope and sent it on in.

Mr. FEIGENBAUM. Mr. Hurley, did Mr. Dempsey make any statement at any time involving the question of the rights of watchers to challenge ballots, that you can recall?

A. The only thing that I can recall Mr. Dempsey saying is what I stated there before, and he told Mr. Hartmann—I think that is his name; he is a heavy-set gentleman that was watching on the table just next to us. I believe, I am not certain, but I believe Mr. Barrett made a statement there at the same time. They had an argument about taking the number of scratched ballots and he was told that he shouldn't take them, and Dempsey told him if he couldn't do what he was ordered to do, that they would have to get a new watcher in there and not to take no more—no; not to make any more notations at all.

Q. Mr. Hartmann was told that by Mr. Dempsey?—A. Yes; there in the argument.

Q. Not to make any notations any further?—A. Not to make any notations, all the notations that was necessary was being made by the judges and clerks on the four sheets—two originals and two duplicate copies of the recount.

Q. Mr. Hurley, in the conversation that took place in the election commissioners' office, or the secretary of the election commissioners' office, the evening before the recount was started—when you say you passed by and heard part of it—was anything said regarding who shall have the right to challenge a ballot and cause it to be put in the disputed envelope?—A. Why, I was standing in the door and it was almost at the end of the meeting and the question come up about watchers—I couldn't say just who asked if there was going to be any watchers, but I believe I remember of Mr. Bogy saying that if it was agreeable with Mr. Hawes, he didn't care about any watchers, and I believe they agreed on that, and I never paid no more attention to it until the next morning, and every table in the place had a watcher. I don't know how they got the watchers, or whether there were watchers ordered, but it was my understanding then, after the judge read the rules and regulations, that the watchers would be detailed at the tables to watch the count, and he didn't say that they shouldn't make any—take any notations or make any remarks, or that they should. The count went along all right—I don't know if it was the same day or the following day when Mr. Dempsey made his statement that the watchers were to make no copy or no notations concerning the recount of the ballots. So, it went along all right then until one evening, and he made the same statement over again.

Q. Now, did he say that they couldn't make notations of the numbers only, or of no memorandum, or they were to make no memoranda?

Mr. Hawes. I object to the form of this question as leading and because the time hasn't been fixed. The record will show that the discussion relating to the selection or appointment of watchers was not decided until the morning of Wednesday.

Mr. Feigenbaum. I will save you that trouble by withdrawing the question and avoiding further discussion about it.

Q. Mr. Hurley, were any of the other election commissioners present when Mr. Dempsey made that announcement around the room?—A. I don't know. I couldn't say for sure whether they were. Mr. Buder was a few minutes before, I believe, but he had gone then. He had left, I believe. I didn't see him around there after that.

Q. At your table were any notations being made on the sheet given you of scratched ballots and straight ballots separate, or were they all counted together?—A. No, sir; they were all counted together. That was our orders, to separate the ballots and count the ballots—the straight ballots first and then the scratched ballots, but to make a notation of the ballots straight and scratched. So, we counted the ballots on a separate piece of paper and then placed them on our sheet.

Q. When did you get that instruction?—A. The morning Judge Arnold read off the instructions. That is the way I took it to be read, and everybody else at our table worked the same way, so I don't think I misunderstood it.

Q. Now, I will call your attention to these two instructions, 5 and 6:

"Separate the scratched ballots from the straight ballots.

"Count the straight ballots first and then the scratched ballots."

Now, was any further explanation made by Judge Arnold as to whether you would keep any notations?—A. He told us not to make any notation on our sheet of the scratched and straight ballots.

Q. He told you that after he got through reading?—A. Put the total number of ballots cast for each contestant and contestee in the proper column.

Q. You remember him saying that?—A. Sure, that is the way——

Q. Did he say that at the time he read off this short list of instructions?—A. That is the way I understood it.

Q. At the table where you were working first—I think you said the sixth table?—A. I think it was table No. 6; I am not certain if that was the right number or not.

Q. And then the next table that was formed later?—A. The first table that I worked at was in the corner of the main office.

Q. Did you notice at either table in checking through the ballots in the separate precincts any large number of ballots in the same precinct scratched—Republican ballots scratched where Bogy's name was scratched and Hawes's name written in in the same handwriting?

Mr. Barrett. Now, I object to that question as calling for a conclusion and as being suggestive. The proper way to conduct an inquiry of that kind is to let the witness state the facts.

Mr. Feigenbaum. You may answer now.

A. Well, I am not a handwriting expert, but I noticed a lot of the ballots that were scratched that looked as if though the same man had printed the names in—the names were printed in in a large number of the ballots.

Q. You say a large number of the ballots the name of Hawes was printed in?—A. Yes, sir.

Q. And was there any similarity in the printing?—A. They looked like they were all made or done by the same hand—by the same party.

Q. Appeared to be the same handwriting, as far as you could see?—A. It was the same lettering, as far as I could see.

Q. What do you refer to as the same lettering?—A. All the letters were made in the same way.

Q. Now, how many in a group were there all of that kind—that is, in any one precinct?

Mr. Barrett. Well, now, this question is too general. Let us be specific, definite, and certain.

Mr. Feigenbaum. If I am more specific, you will say I am leading him, and if I don't lead him I am too general.

Mr. Barrett. You can conduct the examination without being leading and suggestive, and you can also be definite and certain so far as ward and precinct are concerned.

Mr. Feigenbaum. All right. Let him answer the question.

A. I don't know just exactly how many ballots there were, and I couldn't make any—I couldn't set any figure, because we didn't pay any attention to them, and we counted the ballots the way they appeared. If they were for Bogy, they were counted, and if they were for Hawes they were counted.

Q. Did you notice any dissimilarity in the handwriting or names written in on Republican ballots on any one ballot, the name of Hawes being written in, and where the names of other candidates were written in?

Mr. Barrett. I object to that as being too general.

Mr. Feigenbaum. Any one ballot.

Mr. Barrett. Well, I know, but there are several thousand ballots.

A. Well, when we were given our orders I remember we were given orders to pay no attention to any other part of the ballot but Congressmen in the eleventh congressional district, and I didn't look at any other part of the ballot. I don't know if they scratched them—we laid our ballots out and turned them over to that point. We straightened out the ballots at the name where it appeared, and we turned it over. If they were scratched, we called "scratched" and just made a tally of it, and that is the way we counted our ballots.

Mr. Feigenbaum. These ballots you referred to a minute ago as being similarly printed, or where you said the letters were similarly printed, the name of Hawes, was any notation or memoranda made of that?

A. Not unless it was made by the watchers; the clerks didn't make any notation.

Q. And did you notice any of those after Mr. Dempsey had made his announcement that the watchers were to keep no memoranda?—A. No, sir; not at our table. We had no watcher after that at our table.

Q. You understand what I mean, don't you? Did you notice the watchers there?—A. Whether the ballots were scratched that way, or printed in the same hand?

Q. Yes.—A. No; I did not.

Q. Can you tell us now whether these ballots you saw were before you before Mr. Dempsey's announcement or afterwards?

Mr. Barrett. I object to that as being immaterial.

Mr. Feigenbaum. If you say it is immaterial, I will withdraw the question That is all.

Cross-examination by Mr. Barrett:

Q. Now, Mr. Hurley, you were at table No. 6 originally and a new table was started, known as table No. 12, and you were transferred to it?—A. I don't know if it was No. 12 or not. There was no number on our sheet and we were never told about what the table number would be. Anyhow, it was the last table, though. There were not other tables, though, and we had started. We started at that table, I believe, on Wednesday morning, right close to noon.

Q. Table No. 12—Carroll, Landay, Democrats; Hurley and Baker, Republicans?—A. Well, I say, Mr.——

Q. That was the table you were at?—A. Yes; that is the table. I don't know what number it was.

Q. Now, then, Judge Arnold read to you a set of instructions which were afterwards posted up conspicuously in the place, weren't they?—A. Each clerk was presented with a copy of the instructions.

Q. Presented with a copy and there was one also posted upon the post?—A. I don't know if there was one posted.

Q. Didn't you notice it posted up there?—A. Not a copy of these instructions. There was a later instruction posted up about the duplicate ballots being counted. That was a copy.

Q. That instruction was if there were duplicate numbers on the ballots and the number of the ballots on the books corresponded with the number in the poll books, or less, they were to be counted?—A. Yes, sir.

Q. And if the ballots in the box exceeded that, you should report it to the board?—A. Put the number of the ballots on our sheet and that sheet went before the board.

Q. Now, in these instructions—instruction No. 7, ballots with no initial or with only one initial on the back thereof, shall be counted as legal ballots, if numbered?—A. Yes, sir.

Q. You also had this instruction:

"8. If there was any doubt as to whether any ballot has been properly marked, the clerks shall place said ballot in the envelope for decision by the board of election commissioners. Also place in this envelope all ballots that have no corresponding number on the poll books and those that have duplicate or triplicate numbers; also all other disputed ballots."

Is that right?—A. Yes, sir.

Q. In other words, disputed ballots of all character and description were to go in that envelope to be referred to the board?—A. Yes, sir.

Q. No matter what it might be. Now, do I understand you to say that at any time that a watcher for either Mr. Bogy or Mr. Hawes desired to question the validity or legality of that ballot, they could not make a challenge and ask a notation be made thereof and referred to the board?—A. No.

Q. Then do I understand you to say that any watcher could challenge any ballot, calling the attention of the election clerks there to his challenge and have notation made on the sheet of the clerks and have the ballots placed in the disputed envelope and referred to the board; is that correct?—A. Why, the watchers—the clerks were the ones that would discover—that would discover the irregularity of the ballot and in discussing that between the clerks, the watchers would see it and the watchers could pass their opinion to the clerks. The first few days they made notation——

Q. No; that isn't my question, Mr. Hurley. My question is simply this: If the watcher for either side wanted to make objections about some ballot, as to its legality, or to being counted, or as to its irregularity in any manner, and desired to challenge the validity or legality of that ballot, could he bring it to the attention of the clerks and have them in turn make notations on their sheet and have it referred to the board for decision?—A. Yes, sir.

Q. They were not interfered with any way, so far as you know?—A. Yes, sir.

Q. So that any ballot that they desired to question for any purpose they could do so if they chose?—A. Yes, sir.

Q. And that method was followed throughout both tables you sat at; is that right?—A. We had no watchers at the second table, but at the first table.

Q. That is what the watchers did?—A. That is the way they done it.

Q. The last table——A. The last table there was no watchers.

Q. Now, then, Mr. Hurley, with reference to the statement made by Commissioner Dempsey, have you any recollection as to the date that that announcement was made?—A. I couldn't tell you the exact date, but we were working about—we started to work, I think, at—that statement—the first statement made by Mr. Dempsey must have been made about Thursday before noon or Friday before noon.

Q. Thursday before noon or Friday before noon; you are not sure?—A. I couldn't say for sure. We were working a couple of days before he made it.

Q. Now, have you any idea in what ward or precinct you were working on?—A. At that time?

Q. Yes.—A. No; I have not.

Q. Wasn't it Saturday that that announcement was made?—A. I don't think so. I think we were working about two days. I don't think it was Saturday, because I was transferred from that table after that remark was made.

Q. Well, were you not working on the twenty-sixth ward at that time?—A. I don't know if we were working on the twenty-sixth ward or not.

Q. You couldn't give us any idea as to the ward you were working on?—A. No. We went to the window and got our wards the way they come.

Q. Now, was any statement or announcement made by Commissioner Dempsey because of complaint being made about the conduct of Mr. Hartmann?—A. I don't know; I couldn't say that. Whatever took place in the board room before we started to work I didn't hear.

Q. Did you not hear complaints being made there about the conduct of Hartmann?—A. Yes; I have heard——

Q. You heard me making complaint about it, didn't you?—A. Yes; I heard you tell Mr. Hartmann not to make any notations of them numbers of them ballots.

Q. Then you heard me complain on two different occasions?—A. Yes, sir.

Q. About taking numbers of ballots?—A. Yes, sir.

Q. He had a yellow sheet and he had written a number of numbers down?—A. Yes.

Q. And he wanted to take the numbers of a great number of ballots, didn't he?—A. I don't know how many he wanted to take——

Q. He had a whole lot of them on a yellow sheet, didn't he?—A. I don't know; I didn't see the sheet.

Q. Well, I complained he was taking a whole lot of numbers, and that by his method it would expose the ballot of every man who voted; didn't I say that?—A. I didn't hear the exact words, but I heard you tell him he heard the instructions, and if he couldn't quit taking them numbers that you would see he quit it, or something of that nature.

Q. In other words, if he didn't desist from his practice, I was going to make a complaint to the board?—A. Yes, sir; I heard you say that.

Q. And then wasn't he called into the board on complaint being made, or do you know anything about that?—A. I don't know if he was called before the board or not.

Q. Didn't you see him leave the table and go into the board room?—A. No; I never seen him go into the board room at all. I seen him in Mr. Claudius's office, but I don't know if there was any members of the board in there at that time. I didn't see him leave the table while you was talking to him.

Q. Well, my demand—my protest was made in a loud voice—it wasn't secretly?—A. Certainly.

Q. It was open and aboveboard, so everybody could hear it, and my protest was that it looked to me like it was an effort to disclose how every Republican or Democrat voted.

Mr. Bauer. We object to what that protest was.

Mr. Barrett. Is that right?

A. Well, I don't know what your thoughts were when you were telling him that, but you told him not to make any more.

Q. Didn't I make this statement: I am not asking for thoughts, Mr. Bauer. That is what I stated—I stated it open and aboveboard—didn't I say I object and protest to him taking the numbers of the ballots and thereby disclosing how Republicans voted, so he could go out and punish or get even with those Republicans? Didn't I make that objection loudly, and didn't I say——

Mr. Feigenbaum. Let him answer that question first; did he or did he not?

A. I can't recall of hearing that.

Mr. Barrett. Didn't I say this—that every man, no matter what his politics was, Republican or Democrat, had a right to vote just as he pleased?

A. I couldn't say that I heard that, Mr. Barrett.

Q. You didn't hear that?—A. No. About the time——

Q. Didn't I say, whatever way he thought, that was his affair and that was his business and he shouldn't be punished for voting his views or scratching his vote?

Mr. Bauer. Just a moment. I object to that form of question and for the views of counsel simply being put into the record. We agree with Mr. Barrett frankly that no voter should be punished for the manner in which he votes, but the views or the reason for his objection are entirely immaterial, as long as he did make the objection to these records being kept, which is the only material matter.

Mr. Barrett. Well, I don't propose to be misled by counsel for contestant by carrying on a record such as they are attempting to make up in this case. The protest was made by me openly and aboveboard. There was an attempt being made by one Mr. Hartmann, who was formerly a Democrat and was affiliated with the Farmers-Labor Party, and there was an effort made to secure the names of every Republican who scratched his ballot, for the purpose of punishing them or intimidating them, and I made that statement openly, and I thought that that was wrong and that that practice should not be permitted, and it was my object in asking the question that I have of this witness—is for the purpose of showing that the only object was to stop the practice, or the attempt that was being made at that time of securing the names of Republicans or Democrats who scratched their ballots, exposing them to the world and punishing them, and I didn't think that that was right and just, and I wanted that practice stopped, and if Hartmann didn't do it—didn't desist, I would make complaint to the board. Did you hear me make any statement of that kind?

Mr. Feigenbaum. Just a moment. Now, I submit that the last statement is entirely unfair. If this charge is made as against Mr. Hartmann of such improper practice, then counsel who makes that statement should take oath and say that that practice was undertaken by Mr. Hartmann, and so state under oath, instead of merely asking the witness whether such and such wasn't stated.

Mr. Barrett. Now, then, did you hear me make any such statement of that character, Mr. Hurley?

A. I heard Mr. Barrett talking——

Mr. Bauer. Answer yes or no.

A. Well, I couldn't answer it yes or no.

Mr. Feigenbaum. Go ahead.

A. I heard Mr. Barrett—one of the Democrats, I believe Mr. Leahy, called Mr. Barrett over to the table. He told Mr. Barrett that Mr. Hartmann was taking the numbers of ballots. I don't know if he says scratched ballots or not—Mr. Barrett looked at Hartmann's paper that was in front of him—I don't know if it was a yellow paper or a blotter, or what it was, and I heard him start out telling Mr. Hartmann—Hartmann, you know that you are—Hartmann, you know you are not permitted to take the numbers of ballots, and Hartmann said something about the ballot and Leahy said something in the argument—why, we were right in the middle of a count—we were making up our tally sheet, and we were almost ready to turn in our box and the argument kept going and we kept working. I didn't pay any attention to what was going on at that other table. We had two Democrats at our table, and I had a Republican at the table with me. We had enough to do to be counting our own ballots and not be listening to the arguing, because there was so many arguments in the place, I didn't pay that much attention as to how far it went. When the argument was right in the heated part of it, why, I got up to let somebody in the door. The man that was detailed at the door was up listening to the argument, and, if I am not mistaken, I think that Miss Bobb was coming into the door at that time, and I got up and let her in. I didn't hear a lot of the argument, and then when I come back to the table I heard Mr. Barrett tell him that he would have to cease taking them numbers. I don't know if he had one number or a dozen numbers.

Mr. Barrett. Now, then, Mr. Hurley, it was after this argument that you have just described that Commissioner Dempsey made his announcement?

A. Well, I couldn't say if that is when he made the announcement or not.

Q. Well, you don't recall his having made any such announcement prior to this argument you have described, do you?—A. Well, I was paying particular attention to just what was the cause of this announcement being made, because in the election office there is announcements brought out that is not made at the time of an agreement. We have to see everything going on, and then they make an announcement and change it.

Q. Now, Mr. Hurley, listen: What I want to get at is simply this, and nothing else, whether or not Commissioner Dempsey made his announcement before or after this argument was made that you describe?—A. I couldn't say that.

Q. You don't know—you haven't any recollection?—A. I don't know, because I was working in the table at the rear at that time.

Q. Wasn't it within a half hour after that?

Mr. Feigenbaum. I submit the witness has already said he didn't know whether it was before or after.

Mr. Barrett. Then your recollection as to whether it was before or just exactly what transpired and what was said and done is not very clear, is it?

A. Mr. Dempsey's remarks were to the clerks and watchers—that was clear. We were called to attention then.

Q. You got that portion of it clear, but not the rest?—A. Well, there was no reason for me to pay attention to the rest of it.

Q. After this argument or discussion between Hartmann and myself at the table, didn't you see Hartmann go into the board room, and after that—after

Hartmann coming out, was not this announcement made by Commissioner Dempsey——A. I seen Hartmann leave the table, but where he went I don't know. I don't know if he went in the board room or not.

Q. Was not the announcement made by Commissioner Dempsey after Hartmann left the table?—A. I couldn't say whether it was before or after; I didn't pay that much attention to it. I don't even know what day it was made. I can't just remember the announcement.

Q. So far as you know, it may have been made afterwards?—A. It may have been.

Q. You wouldn't say it was not?—A. I don't know.

Q. Now, then, as to the announcement made by Commissioner Dempsey, did he not say that watchers must not take any numbers of ballots or notations of ballots, except that which was written in on the sheets of the clerks of the election commissioner?—A. Yes; he made that statement—that all the necessary remarks were being placed on the report sheet by the clerks.

Q. Now, then, you didn't construe that announcement to mean that if anybody wanted to challenge a ballot—for instance, myself, representing Mr. Hawes or Mr. Bauer, representing Mr. Bogy, Mr. Hawes or Mr. Bogy, desired to challenge any ballot—that is, to question its validity or legality, even though you clerks had determined it was all right—all four of you agreed—did you understand that the statement made by Mr. Dempsey—that Messrs. Hawes or Bogy or myself or Bauer could not still question it and have a notation of it made?—A. No; I never undertsood it that way. I understood that in a case like that, that that ballot was to be placed in the disputed envelope. The only thing I understood about the watchers not to make notations, and that they were allowed to question anything at the table or bring up their argument at that table. So the judges or the clerks—whatever you call the clerks at the table—the argument, if it couldn't be settled, their objection would be sent in to the board in the disputed envelope, but there was to be notation outside of what the clerks placed on their reports to the board.

Q. Then your understanding was that watchers could make objections or challenges and the clerks at the table would indicate and decide it in the first instance?—A. Well, I understood that the watchers weren't permitted to touch the ballots or to make any further remarks than to see them—call the judges' attention to them.

Q. Call the judges' attention?—A. That is all I understood.

Q. There was nothing improper in refusing watchers permission to handle ballots—count ballots—was there?—A. I didn't get that.

Q. There was nothing improper in refusing to permit the watchers to count ballots, was there?—A. Why, no.

Q. That is a duty that properly belongs to the clerks of election?—A. I understood these watchers were the same as in a polling place. Well, the watcher—nobody is allowed to touch the ballots except the judges and clerks—except the judges. The clerks aren't really permitted to touch them, but they do it to get through in a hurry.

Q. But the watchers and contestant and the contestee and their counsel did actually examine ballots and take them into their hand for examination and inspection?—A. I couldn't say that they did; they didn't do it at our table.

Q. Well, didn't you do it at your table?—A. No.

Q. Didn't Bogy or I look at ballots?—A. You looked at them, but you didn't touch them.

Q. Didn't you hand them to us?—A. No, sir; the ballot was stretched out on the table, and you looked at the ballot.

Q. I see. Your method was to call our attention to it and call our attention—show us the ballot?—A. I don't recall what the argument was.

Q. I am asking, if we went to examine a ballot—I recall one instance I was called to your table and Mr. Bogy and myself——

Mr. Feigenbaum. I object to what counsel recalls, because that is direct testimony, and that isn't the question. It isn't in the scope of cross-examination.

Mr. Barrett. I recall in one instance I was called to your table by Mr. Bogy, and there was some question as to whether or not a ballot was to be counted—the ballot was exhibited to us, I think, by you. Do you recall that incident?

A. No, sir. I don't recall calling anybody to our table to count a ballot, because if the judges didn't agree on the counting of that ballot we placed it in the disputed-ballot box.

Q. I understand you don't recall the incident where Mr. Bogy and I were at your table?—A. Yes; I recall the incident where you and Mr. Bogy were at our table. I know you weren't called there to help us determine what we should do with the ballot. You may have been called there to look at the ballot. We had several ballots on our table that every name on the ballot was scratched—and taking, we will say, the Republican ballot, every name on the Republican ballot, electors and all, were scratched and every Democrat's name written in. And I believe that I made the remark that one of them ballots—that that must be a city employee that was keeping the judges and clerks from knowing how he voted. I don't just thoroughly remember calling anybody over there, though, to settle any arguments.

Mr. BARRETT. Mr. Hurley, would another explanation of that last ballot you described be that the judge at that particular precinct was only handing out Republican ballots?

A. No. I never mde any remark like that.

Q. I say, wouldn't that be an explanation of that ballot?

Mr. FEIGENBAUM. He has given his explanation.

A. Yes; you could take it any way you wanted if you saw the ballot.

Mr. BARRETT. Now, Mr. Hurley, you do recall Mr. Bogy and I being at your table and examining ballots?

A. No. I remember you and Mr. Bogy being there; I remember you being there several times—just standing around, passing and looking on.

Q. Well, do you recall us ever looking at any ballots there was any doubt about?—A. No; I can't say I remember about you people looking at any particular ballot.

Q. Now, then, Mr. Hurley, do I understand in the recount, if the numbers of ballots taken in any considerable quantity and a reference is made to the poll book, that you can tell who the particular voter was that cast that ballot?—A. Do you mean in this recount that we worked on?

Q. In a recount—you can do that in a recount by taking the number of the ballot——A. I don't remember of it ever being done.

Q. I say, you understand that by taking the number of a ballot and referring to that number on the poll book, you can tell who the voter was that cast it?—A. Certainly.

Q. And if the numbers of any considerable number of ballots was taken and examination of these numbers made on the poll book, it would disclose who those voters were, wouldn't it?—A. Yes.

Q. And the secrecy of their particular ballots would be destroyed, wouldn't it?—A. Yes.

Q. Now, as to this scratching business—there was considerable scratching going on in that election, wasn't there?—A. Yes, sir.

Q. There were other candidates running in the city at large, Richard A. Jones, Franklin Miller, candidates for circuit judge, and Anthony Hochdoerfer, candidate for judge of the court of criminal correction, and other opponents on the Republican ticket were freely scratched over the city, and the names of these three Democrats I have mentioned were written in on the Republican ballots and there were some 20,000 scratched ballots of that character at that election, of Republicans, is that right?—A. I don't know.

Q. How?—A. I don't know.

Q. Well, isn't it a fact that the Republican ticket as a whole carried the city of St. Louis by some 50,000?—A. Yes.

Q. And isn't it a fact that Hochdoerfer, the Democratic candidate for judge of the court of criminal correction, was returned elected by some 3,400 votes?—A. I couldn't say how many votes he was elected by.

Q. Well, about—you have some idea?—A. I couldn't say, Mr. Barrett.

Q. Well, he was elected?—A. He was elected, yes.

Q. Franklin Miller was returned elected, wasn't he, circuit judge?—A. I believe he was.

Q. Now, then, Jones was defeated by some 1,700 votes, the Democratic candidate, wasn't he?—A. I couldn't say—I don't know.

Q. Well, he was defeated by a small number of votes, wasn't he?—A. Is that the gentleman that——

Q. Ran against Killoren.—A. Killoren went over. I don't know just how many votes he went by.

Q. It was less than 2,000?—A. I don't know.

Q. Which shows that the voters at that election did considerable scratching?—A. Well, as far as this contest was concerned, I didn't pay any attention to the scratching of any other part of the ballot.

Q. I am not talking about this particular case at all. I am talking about the voters generally at that election. There was considerable scratching done, wasn't there?—A. I couldn't say that there was a considerable lot of scratching done.

Q. Doesn't it show there that the city of St. Louis was carried by 50,000 for the Republicans and two Democrats were elected in the city at large; that there must have been considerable scratching done by Republicans?—A. Sure.

Q. Over 20,000?—A. I couldn't give you the numbers.

Q. But there was——A. I didn't pay attention to the figures, but I know there was a lot of scratching done.

Q. There was a lot of scratching done in that election?—A. Yes.

Q. Now, did you find or see anything improper done during the course of the recount at the two tables at which you officiated?—A. That question again.

Q. Did you see or note any improper conduct on the part of the recount clerks at either of the tables at which you officiated?—A. No, sir.

Q. So far as you know, the recount was accurate?—A. Yes.

Q. And fair and conformed to the instructions of the board?—A. At our two tables——

Q. I say, at your two tables?—A. The tables I worked at; yes, sir.

Q. And as far as you know, it was properly counted and tabulated—the votes that were recounted at those two tables?—A. Yes, sir; at our two tables.

Q. Mr. Hurley, is it not a fact that every day at the noon hour—that is, between 12 and 1, and at the dinner hour between 5 and 6, meals were brought in for the two chief clerks, Claudius and Stansbury?—A. Well, I have seen dishes around there, but I didn't know if there was any meals brought around or not. I know when it was time to go out and time to come back and when it was time to go to work.

Q. Did you see anybody else have meals in there besides Claudius and Stansbury?—A. I didn't see anybody eating at all—nobody.

Q. Nobody. Under the practice that was adopted during the course of that recount at 12 o'clock the clerks would all leave the room?—A. Everybody went out.

Q. The ballots and boxes would be left on the tables in charge of Claudius and Stansbury?—A. Well, I don't know who they were left in charge of. As I said, as soon as it was time to leave, why, I left and come back.

Q. Well, the recount clerks were not permitted to go in——A. The doors were held locked while we were out.

Q. While you were away the doors were locked?—A. Yes, sir.

Q. And when you left Claudius and Stansbury were in the room?—A. They were in the room.

Q. And when you came back they were in the room?—A. Yes, sir.

Q. Did you hear any request at either of your tables, made by Mr. Bogy or any of his watchers or counsel—make a request to have any particular ballot or ballots photographed?—A. No ballots at our table requested to be photographed.

Mr. Barrett. I believe that is all.

Mr. Feigenbaum. That is all.

——— ———.

Subscribed and sworn to before me this ——— day of ———, 1921.

——— ———, *Notary Public.*.

My commission expires ——— ———.

Mr. Hawes. Contestee calls attention to the fact that contestant's time expires at midnight on the 29th, and it will be our request, if contestant is to be summonsed as a witness, that he be summonsed at such time as will permit a cross-examination before midnight on the 29th.

Mr. Feigenbaum. We will be glad to comply with the request of contestee, in all events, to give him an opportunity to cross-examine, and we will further say, if agreeable to contestee, we will continue this deposition through a night session to-night and to-morrow night, and would like to, in accordance with our understanding of yesterday, have some additional depositions while these depositions are proceeding, being the identification of some records in the election commissioners' office this afternoon.

Mr. Hawes. Contestee desires to state this, that that is entirely agreeable, and we will cooperate in any manner to expedite the hearing of witnesses.

GRACE GUY, of lawful age, being produced, sworn, and examined on the part of the contestant, deposeth and saith:

Direct examination by Mr. FEIGENBAUM:

Q. Please state your name.—A. Mrs. Grace Guy.

Q. What is your address?—A. 1111 Branch.

Q. Mrs. Guy, how long have you lived at this address?—A. That is, around three years now.

Q. You are married?—A. Yes, sir.

Q. And you live with your husband?—A. I certainly do.

Q. And did you register at the last general election on November 2?—A Yes, sir.

Q. Or just before November 2?—A. Yes, sir; I registered.

Q. And in what precinct, if you know?—A. Why, I don't know. I think it is—it is on Broadway there at the barber shop, 3100 or 3200—I don't know what precinct it is in, the second or third.

Q. That is in the eleventh congressional district?—A. I know so little about politics.

Q. Well, what is the address now of the voting place?—A. Well, it is that barber shop on Broadway.

Q. Broadway and what?—A. Is it 3100 or 3200?

Q. 3100 or 3200 Broadway?

Mr. BARRETT. Are you asking anybody any questions?

The WITNESS. It is that barber shop. I ought to know.

Mr. FEIGENBAUM. Mrs. Guy, did you undertake to vote, or did you vote on the 2d of November?

A. I voted; yes, sir.

Q. Will you tell us what occurred when you went and cast your ballot at that polling place?—A. Well, I started out early—I tried to be the first woman that voted——

Mr. BARRETT. Wait a minute. Unless we have the designation of the ward and precinct, I say that that is too general. We ought to know.

Mr. FEIGENBAUM. I can introduce anybody in here that that is the eleventh congressional district—there isn't any question about it in your own mind, is there?

Mr. BARRETT. You say the barber shop?

A. I say I do know Branch is 3200, and it is that barber shop down at the end of the block on the west side of the street. I suppose I ought to know about that when I registered. But when I was going up Broadway there a medium-stout gentleman stepped up to me—I didn't think it was very nice, of course—and he said, "Are you going to vote?" And I said, "Yes, sir." He said, "Well, how are you going to vote?" Well, I thought, in the first place, it was none of his business, but I just said, "Straight Republican ticket"; so he followed me down and he told me that I ought to change my mind; that I should vote the straight Democratic ticket. "Well," I says, "I have a mind of my own, and when I get there I will vote the way I see fit." Well, then he went into the polling place with me, and stood there, and they asked me what ticket that I wanted to vote, and I said, "Well straight Republican." And they handed me a vote and I fixed it right out on the table and cast—gave it to the judge and he put it in.

Q. Well, what did he say, if anything, this man that followed you inside the poling place?—A. He told me not to vote the Republican ticket; to vote the straight Democratic; that if I didn't I was going against my husband or sweetheart—or husband, whoever I had. That it was the union; that Cox was union. "Well," I said, "well, my husband had always been a union man and I thought by voting the Republican ticket I was doing just as much for the union as the Democratic ticket." He said I must change it, and he handed me these pamphlets.

Q. He handed you some pamphlets?—A. Pamphlets. Of course, I didn't look at them; I just folded them up.

Q. You didn't care about them?—A. Of course, I didn't know much—I never have been much personally acquainted with Mr. Hawes or Mr. Bogy. I just was voting my ticket.

Q. You know this is Maj. Hawes. [Indicating contestee.]—A. Well, I am certainly pleased to meet you also.

Q. This is Mr. Bogy. [Indicating contestant.]—A. I didn't know either one of them.

Q. You didn't know either one of them personally?—A. Personally, but I didn't think it was right for that gentleman to do that, and I don't think it was right for them to give me one ticket. I found out afterwards you are supposed to receive them all. I stand very high in my lodge matters—I am district deputy chief——

Mr. BARRETT. I move all that be stricken out.

A. I would just as soon vote for Mr. Hawes, if I was voting the Democratic ticket, as for Mr. Bogy. I think the Republicans should stick to them, if you choose, and if you are a Democrat stand by them to the end.

Mr. FEIGENBAUM. You are a good Republican—there is no question about that in my mind; but, Mrs. Guy, did this gentleman who followed you in vote in your precinct there—did you see him vote?

A. No; I don't believe he did. I was too anxious to get out.

Q. Did he have a badge on or anything?—A. He had a badge on him; yes.

Q. He had a badge?—A. Yes.

Q. Did you notice what it said on there?—A. No; I did not; because I was the only lady in there.

Mr. FEIGENBAUM. That is all.

Cross-examination by Mr. BARRETT:

Q. You spoke of the gentleman handing you some lterature, to vote for Cox and you vote for the unions. What kind of literature was it? Was it union-labor literature?—A. I don't remember that, because I folded it over and laid it aside, because I had made up my mind. The headlines told you all about the union; that Harding was against this and that and the other, and what Cox was for and what the party was for and what it wasn't, but it was all in regard to the unions. Of course, my husband is union and I stand by them, but I figured the Republicans as well as the Democrats.

Q. Counsel for contestant stated you were a good Republican. He was a little bit mistaken about that. He should have said you were a staunch Republican.—A. Well, I would be a staunch Republican if I did that too. That is what I say, if anybody is a Democrat, let them stand by the one the Democrats put up——

Q. Pardon me. I didn't desire to interrupt you, but this all goes in the record.—A. I beg your pardon.

Q. You say you voted at that election?—A. Yes, sir.

Q. And you voted the straight Republican ballot?—A. Yes, sir.

Q. And it was put in the box?—A. Yes, sir; they just handed me one ticket. I didn't know whether it is right——

Q. This man was on the outside soliciting?—A. He followed me from——

Q. I say, he was on the outside.—A. He followed me from the Mound City plant down to the polling place.

—— ——.

Subscribed and sworn to before me this —— day of ——, 1921.

—— ——, *Notary Public.*

My commission expires —— ——.

EMMA J. BOBB, of lawful age, being produced, sworn, and examined, on the part of the contestant, deposeth and saith:

Direct examination by Mr. FEIGENBAUM:

Q. Please state your name?—A. Emma J. Bobb.

Q. Where do you live?—A. 3830 Hartford.

Q. Miss Bobb, what is your occupation?—A. I am assistant to the board of election commissioners, city of St. Louis.

Q. How long have you been so engaged?—A. About 11 years.

Q. Miss Bobb, were you present in the office of the secretary of the board of election commissioners on the evening or during the day of the 11th of January when some discussion took place as to how this recount in the Bogy-Hawes contest was to be conducted?—A. I was present during part of the times; yes; not during the entire discussion.

Q. Well, were you present when the discussion came up about keeping any memoranda about scratched ballots?—A. No.

Q. You weren't present?—A. I wasn't present. There was nothing said about keeping any record of scratched ballots that I know of.

Q. Not while you were there?—A. Not while I was present.

Q. Were you present when any discussion took place about photographing any ballots?—A. The only thing that I know about photographing is after the stipulation had been agreed upon, Mr. Bogy made some statement to the board—addressed remarks to the board that he desired photographs taken of certain ballots. They said they would take that matter up later. It was not determined at that time, and then the only other time that photographing was mentioned was when the board was passing on scratched ballots, and my recollection is I think there were three ballots then that were in the disputed envelopes—three or four; I am not quite certain——

Q. Five.—A. Five. I believe you are correct. I believe three in one precinct and two in another, and I made the notation on the return sheet of the clerk in red ink that they desired to photograph these five ballots. That is the only time I know anything about photographs.

Q. Well, the first time that you say you heard Mr. Bogy say that he wanted some photographs taken, what day was that?—A. It was the morning of January 11.

Q. It was the morning of January 11?—A. Yes.

Q. Do you know when this stipulation that has been referred to several times was signed?—A. The morning of January 11.

Q. The morning of the 11th. Was that when the final stipulation was signed?—A. Yes.

Q. Was that stipulation redrafted once or twice?—A. No; it was dictated to me and I read the corrections, and any corrections or changes that were desired to be made were made during the dictation of it, but never changed.

Q. When was that done?—A. The morning of the 11th.

Q. Then you brought that in and it was signed without any further change?—A. Yes, sir.

Q. Did you hear what Judge Arnold said with reference to what memoranda could be kept by Mr. Bogy or his watchers?—A. No; I heard no—I did not hear any.

Q. I refer now to the morning of the 11th.—A. The morning of the 11th.

Q. You heard nothing Judge Arnold said?—A. Nothing but the instructions that were read.

Q. And do you recall when Judge Arnold outlined what sort of sheets would be kept for the clerks to make their tabulations on?—A. Yes.

Q. And did you hear him say anything about the scratched ballots—where the scratched ballots would be noted? Do you remember pointing to anything?—A. I was present when these forms were prepared.

Q. I understand; but you can remember that, of course?—A. That was all done between the discussion between the board and the contestee and contestant and their respective counsel, and after that discussion this form here was agreed to, by both the contestant and contestee, and that was submitted to both of them, and the entire plan was indorsed the following morning—that was on January 11—and then the following morning there was only one change made in this form, and that was at the bottom. Mr. Bogy requested that there be a space placed for the ballots that contained but one initial for him and also those that had none and likewise for Maj. Hawes.

Q. Now, this is a copy of one of those forms?—A. I would say it was. I can't see a thing this morning, gentlemen. I have been going to the oculist for treatment, and I am practically blind to-day; but I would say that it is.

Q. These forms that were made, without asking you to look at it, had a space for only three columns?—A. Yes.

Q. And did Judge Arnold point out that disputed ballots could be noted, as well as straight ballots in the nearest of those spaces?—A. There were three columns on that sheet. The first column was to contain the total votes in the box as counted, which, of course, mean both straight and scratched ballots. There to be a total kept. The second column was for rejected ballots, and the third column was for disputed ballots.

Q. Now, did he say where the scratched ballots would be kept, and whether they would be kept separate in that column of total votes?—A. There was to be no record kept according to the understanding between the contestant and the contestee of scratched ballots; just the total vote was to be kept in that first column.

Q. Well, didn't you hear any discussion where Mr. Bogy requested that there be some record kept of scratched ballots?—A. They discussed the entire mode of procedure of this contest before the stipulation was ever drawn up, or these forms, and their pleasure was asked in the matter by chairman Arnold. I remember that very distinctly.

Q. Do you recall Mr. Bogy saying anything about keeping track of scratched ballots?—A. They discussed everything, straight and scratched ballots, and after everything was discussed this form was adopted, and it was agreed that only the total was to be tabulated, and the stipulation was signed, and the contest conducted according to the stipulation.

Q. Now, after this discussion that you related occurred on the 11th——A. Yes; that was on the morning of the 11th.

Q. This form was drawn at the same time?—A. Yes; and changed on the morning of the 12th as to the bottom of it only.

Q. Wasn't there some further discussion on the morning of the 12th as to scratched ballots?—A. If there was, I wasn't present.

Q. And did you hear something on the morning of the 12th with reference to photographing scratched ballots?—A. No; I did not.

Q. You didn't hear that?—A. I did not.

Q. Were you in there, in the office of the secretary of the board of election commissioners all morning?—A. Occasionally I left the board room to transcribe what had been dictated, you know. I wasn't present during all the discussion.

Q. If such a thing was said, you did not hear it?—A. I did not hear it; no, sir.

Q. Miss Bobb, did you hear Mr. Dempsey's statement made Friday morning?—A. No; I did not.

Q. You didn't hear that?—A. No, sir. I heard one statement made; that was all.

Q. When was that?—A. Friday afternoon, as I recall. Now, I may be in error as to that time, but I think it was Friday afternoon.

Q. Do you recall what the substance of that statement was?—A. Yes; the gist of it was this, that one of the watchers—I forget at what table it was, but it was near the window—was handling all the ballots instead of the clerks in the office handling them, as was agreed originally, and Mr. Dempsey merely came up and made the announcement that the watchers were not to handle the ballots, and that is all he said.

Q. Don't you recall—you say that was Friday afternoon?—A. I think it was Friday afternoon, Mr. Feigenbaum. I am sure it was after my lunch.

Q. Did you hear any announcement made by Mr. Dempsey Friday morning?—A. No; I did not.

Q. You didn't hear any announcement made with reference to keeping—— A. I had nothing to do with the outside office work at all. I am confined to the chairman's room and the board room.

Q. You have a private office?—A. Yes, sir; private office.

Q. And if statements were made on the outside, you didn't hear them?—A. They didn't concern me, and therefore I didn't listen to them. I had nothing to do with the recounting of the ballots.

Q. Miss Bobb, are those total sheets now ready in the office—in the election office—do you know?—A. Why, I really couldn't say exactly whether they are or not, Mr. Feigenbaum. I don't know whether the board has finally determined—you see, I wasn't present when the meeting closed the other day, and I am sure they are not finished.

Q. You are sure?—A. I am quite sure they are not finished.

Q. Miss Bobb, do you recall our being at the election commissioners' office—that is, I refer to contestee, contestant, Mr. Bauer, I think, and myself, counsel for contestee, Mr. Cummings and Mr. Barrett, a week ago to-day?—A. A week ago to-day. That was the——

Q. When depositions were to be taken?—A. Let's see—what day were you checking up as counsel? That is the only day I remember you being there.

Q. That was the week prior.—A. Oh, a week ago to-day. What day is that? Last Friday—yes. That was in the afternoon, wasn't it, when the board passed on the disputed ballots?

Q. No; that was another occasion I think you are referring to now, Miss Bobb.—A. Is that so?

Q. I refer now to the occasion when the discussion came up about when these sheets would be completed so that the examination of Judge Arnold could proceed. Do you recall that?—A. Yes; I remember that.

Q. You recall that?—A. Yes; I remember that.

Q. And do you recall Judge Arnold saying that he thought they would be ready about the following morning, and Mr. Buder interposing that they had better lay the depositions over until Tuesday morning, so as not to necessitate working Saturday afternoon and that at that time all those final sheets would be completed?—A. Yes; I remember that.

Q. Do you recall that?—A. Yes; I recall that; but then that was changed later, and it was agreed that you would adjourn until Saturday morning.

Q. Yes; and then it was decided we would adjourn until Saturday morning.—A. Saturday morning instead of Tuesday.

Q. And then do you recall us being there Saturday morning?—A. Yes; you came Saturday morning.

Q. And then do you remember Judge Arnold then saying that the sheets weren't quite completed?—A. Yes.

Q. That by Tuesday morning they surely would be completed?—A. He said he hoped to finish them Monday.

Q. He said he hoped to finish them Monday?—A. He said he hoped to finish them Monday.

Q. And we could have these sheets when we arrived Tuesday morning to take our deposition?—A. Yes.

Q. Was anything then said that you remember—now. I refer to Saturday morning—about any changes having to be made in the sheets yet at that time?—A. Mr. Feigenbaum, I wasn't in the board meeting at all, because I understood Saturday morning—because I understood it was merely taking Judge Arnold's deposition and had nothing whatever to do with the action of our board. Therefore I wasn't present at all. I didn't go into the board room.

Q. You don't recall whether you were there or not?—A. I wasn't, not Saturday morning.

Mr. Feigenbaum. That is all.

Cross-examination by Mr. Hawes:

Q. I will ask, Miss Bobb, if it was not the custom of the board during the recount to have one of the members present all of the time, with the understanding that when a meeting of the board was desired, that you would call the board into session?—A. Yes, sir; that is the distinct understanding when any procedure is going on in our office.

Q. The commissioners are men who do not devote their entire time——A. No, sir.

Q. To the services of the board?—A. It isn't required; no, sir.

Q. So that by agreement amongst themselves, one commissioner was continuously?—A. Yes, sir.

Q. Depending on how busy he might happen to be?—A. That is correct.

Q. But at any time that either contestant or contestee wanted a full meeting of the board——A. I summoned the other members.

Q. You summoned the other members——A. Yes, sir; that is correct.

Q. Whenever that request was made?—A. That is correct.

Q. Do you know that the final tabulation now about completed by the board is made from certain original slips prepared by the clerks at each one of the tables?—A. Yes, sir; I do know that.

Q. And that these original memorandum were completed at the end of the count of each box?—A. Yes, sir; they were completed, I think, on January 17.

Q. The count was completed on Monday evening, January——A. Seventeenth.

Q. January 17?—A. Yes, sir.

Q. Now, to the best of your knowledge, were not contestant and contestee told at that time these original records would be given to each side and they could have them at any time?—A. Yes, sir. That was agreed the morning of the count—I think January 11 it was agreed that carbon copies would be made, two be drawn by the board, one by the contestant, and one for contestee.

Q. So that the 18th of January either side could have had this original memorandum to finish their examination?—A. Yes, sir.

Q. And the work that the board is now doing is simply a tabulation of those original returns?—A. Returns.

Q. Or recount?—A. Recount is right.

Q. You were present at the time this stipulation was signed by contestant, contestee, and counsel, were you not?—A. I was.

Q. A long discussion as to the character of the stipulation proceeded its signing?—A. It surely did.

Q. At the time of its signing, was there any objection made by contestant to any of these provisions?—A. No, sir; none that I know of.

Q. In the stipulation?—A. None that I know of.

Q. In the preparation of the memorandum used by the clerks in the office, there was discussion about that?—A. Yes. That was the mode of procedure to be adopted in the conduct of this recount.

Q. And that was the method of procedure?—A. Yes, sir.

Q. Is it not a fact that first one form was prepared and you wrote it and then it was subsequently changed at the suggestion of Mr. Bogy and counsel?—A. Yes; it was adopted on the morning of the 11th and changed on the morning of the 12th.

Q. Changed on the morning of the 12th?—A. Yes, sir.

Q. At the time this record slip was prepared and after the discussion, did you hear any agreement about this, or was any objection made to it by contestant or counsel?—A. I did not.

Q. It was finally agreed to without any dispute?—A. Yes, sir; that was the form adopted.

Q. Did you hear Judge Arnold dictate the instructions to the clerk?—A. Judge Arnold dictated the instructions to me in the presence of the contestant and contestee and their respective counsel. I read them from my shorthand notes and they were approved. I subsequently wrote them and they were given to the clerks and then read by Judge Arnold to the clerks in the office in the presence—the notary was present during these procedures.

Q. These were read to contestant and counsel before they were finally reduced to writing by you?—A. Yes, sir. I read them from my shorthand notes.

Q. They agreed to these instructions?—A. Yes, sir. The next morning there was but one addition made to these instructions.

Q. Can you state what that addition was?—A. I think the words "if numbered" was added to paragraph 7, if I am not mistaken. I think "if numbered" was added to paragraph 7. Those are the only changes that were made in the instructions.

Q. But the shorthand notes taken during these sessions of the board were made by you?—A. Yes, sir.

Q. Long discussion preceded the signing of the agreement?—A. Yes, sir.

Q. Participated in by contestant and counsel?—A. Yes, sir.

Q. Discussions preceded the preparation of the form of report?—A. Yes, sir.

Q. Discussions preceded the preparation of the instructions?—A. Yes, sir.

Q. And the stipulation and form of report and the instructions were all agreed to by contestant and counsel?—A. Yes, sir; they were.

Q. The form as finally agreed to provided for a column for the total vote?—A. Yes, sir.

Q. And a column for the rejected ballots?—A. That is right.

Q. And a column for the disputed ballots?—A. That is right.

Q. Was it not the general understanding that the count should proceed in this way: The ballot box to be placed upon the table before two Republican clerks and two Democratic clerks appointed and counted by them?—A. That is correct.

Q. In the presence of a watcher selected by contestant and contestee?—A. That is correct.

Q. That in case a dispute arose about any ballot upon which the two Republican clerks and the two Democratic clerks could not agree, that this disputed ballot was to be placed in an envelope marked "Disputed ballots" and brought to the board of election commissioners for settlement?—A. That is correct.

Q. Was it not your understanding and so stated that any watcher for contestant and contestee, or contestant or contestee, or attorney for contestant or contestee, had the right to question any ballot during the recount, and that such ballot should be placed in the disputed-ballot envelope?—A. Yes; they could raise objection, is my understanding, to the counters, and they would in turn refer it to the board for action.

Q. Were you present when these disputed ballots were opened by the board at any time?—A. Yes, sir; I was.

Q. At the time the disputed ballots were opened, contestant and contestee and their attorneys were present?—A. They were.

Q. And they participated in the discussion with the board as to the merits of each ballot under dispute?—A. Yes, sir.

Q. Did you at any time hear contestant or contestee raise any objection to any ruling of the board to any single disputed ballot?—A. The question was raised—I think at the second meeting of the board—on disputed ballots as to the counting of ballots where either the name of the contestant or the contestee was unerased and the name of his opponent written in, thereby giving two names on the face to be voted on.

Q. That was an objection by me?—A. That was an objection made by the contestee; yes, sir.

Q. I stated that I had lost some three hundred and odd votes because voters had written in my name and neglected to scratch that of Mr. Bogy?—A. Yes, sir.

Q. My claim was it was the clear intent of the three hundred and odd voters——

Mr. Bogy. I object to the method of that question.

Mr. Hawes. Who voted for me, and that I excepted—I objected to the ruling of the board in not allowing me those ballots?

A. Yes, sir.

Q. And I was overruled by the board?—A. Yes, sir.

Q. I also made claim for certain missing ballots where the record was clear that ballots were——

Mr. Bauer. I object to this statement going into this record. It is evidently the intention and purpose of the contestee to burden and overburden this record with stuff that is absolutely immaterial and at the expense of this contestant.

Mr. Hawes. I made this claim and that argument—that claim was allowed; is that your recollection?

A. Yes; that is my recollection of it. Maj. Hawes, I answered your last question—I would want to add this to it. I know that only as to ward 18, precinct 12. That was the only one that I have a memorandum of. As to the others, I haven't any.

Q. And it was agreed that similar situations to that in ward 18, precinct 12, should be submitted to the board to pass on?—A. If it was, Major, I wasn't present. I don't know about that. I do know about 18–12, though. I was present when that occurred.

Q. Is there any question about Commissioner Dempsey being a Republican—have you ever heard it questioned?—A. Never; I have never heard it questioned.

Q. He was known as a Republican throughout the city by everybody?—A. Yes, sir.

Q. Never heard it questioned at any time?—A. No.

Q. As a matter of fact, do you know whether when he was appointed he received the indorsement of the entire Republican city committee?—A. My recollection is that he did, or the major portion of it.

Q. And the indorsement of the mayor of the city?—A. That I don't know. Now, gentlemen, my answer here is only what Mr. Dempsey has told me—it is hearsay, pure and simple. I know nothing of my own knowledge.

Q. Miss Bobb, in the recent election you had an approximate increase of 127,000 women voters?—A. Yes, sir.

Q. And to take care of those 127,000 voters the election commissioners were only able to provide 100 precincts for the whole city—additional voting places?—A. Yes, sir.

Q. Were there unusual delays in counting all over the city?—A. In the larger precincts; yes.

Q. Were some of the precincts out as long as 48 hours?—A. Yes; the last return came in Thursday, November 4, at 5 p. m.

Q. Thursday, November 4, at 5 p. m.?—A. Thursday, November 4, at 5 p. m.

Q. And that was in what ward?—A. 28–12.

Q. 28–12?—A. I beg your pardon—28–7.

Q. That is an aristocratic ward of the city, so called?—A. Yes; so called.

Q. In the tenth district?—A. That is in the tenth district.

Q. Were you present in the election commissioners' office on election day?—A. I was.

Q. Was there an unusual number of complaints that day?—A. No; I thought the election was exceedingly quiet.

Q. Did you hear of any complaints being made of the conduct of the election in the eleventh district?—A. No, sir; I did not. No; we didn't get very many calls on election day.

Q. Some of the candidates on the Republican ticket received over 55,000 majority?—A. Yes.

Q. And yet two Democrats, one judge of the criminal court and one judge of the circuit court, were elected?—A. Yes.

Q. Which would indicate that over 25,000 scratched on election day?—A. That would indicate heavy scratching. I wouldn't estimate the number, but it would indicate very large scratching, of course, to offset the Republican majority of the other candidates.

Q. And so that in addition to the increase of 127,000 votes, the scratching—unusual scratching—created further delay?—A. Yes.

Q. Were any reports made to the election commissioners' office about repeaters in any ward in the eleventh district?—A. In the eleventh district? No. I remember one charge being made about repeaters in the sixth, but I don't know whether that precinct was in the eleventh district or not, but it was investigated immediately——

Q. That is not in the district?—A. That isn't in the district.

Mr. Feigenbaum. The sixth precinct?

A. The sixth ward, but that is not in the district. And that was found to be not well founded.

Mr. Hawes. Miss Bobb, these original memorandums were completed on the night of the 17th and were there ready for delivery to contestant and contestee on the day of the 18th?—A. Yes; they were; but no request was made for them, as I understand, and then just prior to making the recapitulation of the sheet, Chairman Arnold requested more assistance in the office to compare each one of the four copies to be sure that each one—that they were correct—that they were the same, that there was no difference in any of the copies.

Q. And they were finally delivered to contestant and contestee?—A. Maj. Hawes, I don't know whether they were or not.

Mr. Feigenbaum. We will admit they were delivered only four days ago.

Mr. Hawes. Well, they were completed ready for delivery and it was agreed that contestant and contestee should have a duplicate of the recount made at each table?—A. That was agreed on the morning of the 11th in the discussion.

Q. On the morning of the 11th, and these tabulations were completed as fast as the count in the ward was completed?—A. Yes.

Q. And they were ready for delivery on the morning of the 18th?—A. Yes. No request was made for them.

Q. And they could have been secured at that time upon a request of either contestant or contestee?—A. Why, I feel confident they could have been, certainly.

Q. So it was merely a matter of request as to whether they were delivered or not delivered; that is all.

Redirect examination by Mr. Feigenbaum:

Q. Just one question, Miss Bobb. Do you remember when we were in the office on that Friday only a week ago to-day?—A. Yes.

Q. And that I said I would like to have these sheets and Mr.—either Mr. Stansbury or Mr. Claudius said I will get them some time the next day and that they would compare them and they would be completed by that time?—A. Yes. You see, my recollection is this, that at the first meeting held after the recount was actually finished, the chairman then requested Mr. Stansbury and Mr. Claudius to have a comparison made of these four sheets to be sure they were exact copies of one another.

Q. But that wasn't done until some time within the last week?—A. That was done on the morning, I think, of the 21st, if I am not mistaken.

Q. Now, if that was turned over to me on the morning of the 25th, being last Tuesday, when Judge Arnold's deposition was taken——A. Yes.

Q. Would that refresh your memory as to when the comparisons were completed?—A. Why, the comparisons were started immediately after the conference of contestant and contestee.

Q. On the 21st?—A. On the 21st. I think that was a week ago to-day. Chairman Arnold asked you if you desired to have watchers present when the recapitulation was made and you all waived that. Then Chairman Arnold said the four copies should be compared.

Q. Before they were given us?—A. Before they were given you; yes, sir.

Q. And do you or do you not know they were given me on the morning of the 25th, and at that time one of these sheets was not as yet handed me but was brought in a little later?—A. I don't know that, Mr. Feigenbaum; I wasn't present there. You see, that was turned over to Mr. Stansbury and Mr. Claudius.

Q. You don't know of your own knowledge exactly when the comparisons were completed?—A. The comparisons were completed, I think, on Saturday morning, the 22d.

Q. You know of no reason why one sheet still was uncompleted on the morning of the 25th?—A. No; I do not—I know of no reason.

Mr. Bogy. Miss Bobb, do you remember shortly after the election my coming in there—I believe the next day and speaking to you and your telling me something about some precinct had been brought in there—the returns from some precinct, and it had to be corrected, that the return indicated a larger vote had been cast than there were registered in the precinct?

Mr. Barrett. Just a minute. I want to object to that question unless it is confined to some ward or precinct.

Mr. Bogy. All right. The twentieth ward.

Mr. Feigenbaum. Any of the precincts in the eleventh congressional district.

Mr. Barrett. Tell us which one it is.

Mr. Feigenbaum. If he don't know, he can't tell you. He said the twentieth ward and in the eleventh congressional district.

Mr. Bogy. I know it wasn't the first precinct.

A. Mr. Bogy, I wasn't in the office the morning after the election.

Q. It may have been the second day. There was some precinct that was kept out longer than the others. That precinct—I went down there; it was the day you saw me come in and I called your attention to certain discrepancies where Hawes had just 100 votes even more than Breckenridge Long.—A. You showed me quite a few tabulations.

Q. I was there and I was trying to get the total count of this precinct, and you said that they had to correct it, or something of the sort, that they had more votes cast than were registered in the precinct in the twentieth ward?—A. Mr. Bogy, I don't remember, and I am afraid you are in error on that statement.

Mr. Hawes. I submit the question is improper, because whatever precinct it might have been the recount and the tabulation will show whether the returns were properly made—whichever precinct it was, the record on the original memorandum will show just exactly the condition of the returns.

Mr. Bogy. The recount and tabulation shows that there were only about—I think 4 precincts out of the 155 that were correct. The return from the district—that 151 of the precincts were invalid and showed evidence of errors, and in a great many of them there were a great many more votes in the ballot box than the poll books called for, and in a great many of them fewer votes, and in only four instances—I think it was only four instances that the recount did not show that there were irregularities in those precincts. There were irregularities shown in all of the precincts, excepting, I think, four in the whole district.

Mr. Hawes. I have objected before to this attempt of the contestant to testify when he is not under oath. He has an opportunity to testify subject to cross-examination, and I protest again at the attempt of contestant to testify without submitting himself to the oath which was administered to me and the opportunity of cross-examination.

Mr. Feigenbaum. This question and objection is made by Maj. Hawes—to the last question, which started this long discussion, and if Maj. Hawes still insists on this objection we are willing that the question and answer may be stricken out.

Mr. Hawes. No; I do not object to the question if the ward and precinct is designated and contestant will confine himself to a question and not put evidence into the record which is not made under oath.

Mr. Feigenbaum. We now ask whether in the exact form the question as put contestee objects to it—regardless of the naming of any precinct—if contestee still insists on his objection to the question as put? If so, we are willing it be withdrawn.

Mr. Hawes. That is all.

Mr. Feigenbaum. That is all.

——— ———.

Subscribed and sworn to before me this —— day of ———, 1921.

——— ———,

Notary Public.

My commission expires ——— ———.

NOTARY PUBLIC. Before adjournment I would like to ask counsel for contestant and contestee regarding the signing of the depositions of witnesses that have heretofore been taken—as to whether or not any of the signatures will be waived or whether you want the notary to obtain the signatures to these depositions, or whether you will have them in this office at a certain time appointed by me?

Mr. FEIGENBAUM. Having full confidence in the stenographers, whom we understand are court stenographers, and likewise in the notary public, before whom they were taken, we are perfectly willing, in behalf of contestant, that the signatures to such depositions may be waived and these depositions as taken and written up be considered the true deposition of such witnesses.

Mr. HAWES. Wait a minute. Do you mean that applies to all of the witnesses?

Mr. FEIGENBAUM. That is, so far taken.

Mr. HAWES. If I wanted to waive part of them and ask for the signatures of some, would that be proper?

Mr. FEIGENBAUM. Yes; if there is any particular individual you prefer to have sign. The only reason we did that is to expedite matters so the notary doesn't have to go around looking for these witnesses after they have been down here. If there are any particular individuals whose signatures are requested to be signed——

Mr. BARRETT. Only let Mrs. Caulfield be back here.

Mr. FEIGENBAUM. Do you want her to sign?

Mr. BARRETT. When will she be back?

Mr. FEIGENBAUM. She may not be back for a week.

Mr. HAWES. I agree to waive the signature on that.

(Thereupon, at 12.45 p. m., a recess was taken until 2 o'clock p. m.)

(Pursuant to the above recess, at 2 o'clock p. m., the following proceedings were had:)

Mr. HAWES. I desire to insert this statement in the record at this time. Contestee served notice on contestant, Bernard P. Bogy, that his deposition would be taken on Monday, January 31, 1921, at the office of Peter T. Barrett, in room 900, Times Building, St. Louis, Mo., at 10 o'clock a. m.

Contestee desires now to notify contestant and counsel that he will not take contestant's testimony at that time.

Contestee, therefore, in fairness, desires to notify contestant that he probably will not take contestant's testimony at any time, so that if contestant desires to have his testimony placed in the record he is requested to do so before the expiration of contestant's time, which expires at midnight January 29.

This notice is given so that there may be no excuse for contestant not giving his testimony, as, upon the conclusion of contestant's time at midnight January 29, contestee may decide not to take testimony of any kind.

SAM GUTMAN, of lawful age, being produced, sworn, and examined, on the part of the contestant, deposeth and saith:

Direct examination by Mr. FEIGENBAUM:

Q. Please state your name?—A. Sam Gutman.

Q. Where do you reside, Mr. Gutman?—A. 7117 Manchester.

Q. Mr. Gutman, what is your present occupation?—A. I am with the Remedial Loan Co. here.

Q. The Remedial Loan Co. That is on this floor—the third floor of the Chemical Building?—A. 303 Chemical Building.

Q. In what capacity, Mr. Gutman?—A. Salesman.

Q. You are a salesman?—A. Yes, sir.

Q. Prior to November 2, 1920—that is the day of the last general election—where and in what capacity were you employed?—A. I was getting business for the Much Ado paper in the advertising department.

Q. Were you a salesman?—A. Yes, sir.

Q. Solicitor for the advertising department of Much Ado?—A. Yes, sir.

Q. Is that a magazine?—A. Yes, sir.

Q. Published in the city of St. Louis, Mo.?—A. Yes.

Q. And issued from the Turner Building, on Delmar Boulevard?—A. I think so.

Q. What is the character of the circulation of that publication known as Much Ado?—A. It has a local circulation here in St. Louis and out of town.

Q. Is its circulation largely confined to St. Louis?—A. I don't know the exact proportion of it.

Q. But it is sold in St. Louis at news stands?—A. At all news stands.

Q. Have you ever obtained advertisements from candidates for public office?

Mr. BARRETT. I object to that question as being immaterial to any of the issues involved in this case.

A. Yes, sir.

Mr. FEIGENBAUM. Do you know Mr. Harry B. Hawes, who was a candidate for Congress from the eleventh congressional district, in the city of St. Louis, Mo., and who is now in the room?

A. I knew he was running for office; yes, sir.

Q. Do you know him personally?—A. No, sir.

Q. Do you know him by sight?—A. I never met the gentleman before.

Q. Before when?—A. Before I called on him.

Q. Yes; but you know him now when you see him?—A. Yes; that is the gentleman [indicating contestee].

Q. You know this is Maj. Hawes sitting there?—A. Yes, sir.

Q. Tell us when, if at any time, you called on him—approximately.—A. Mr. Murphy, our advertising manager of the paper, and myself made several calls to Mr. Hawes's office, and the first time we called the major was out of town. The second time we called he happened to be in.

Q. And what conversation, if any, did you have with Maj. Hawes on this occasion when you say he was in?—A. I did some of the talking and Mr. Murphy did some of the talking. I believe I opened the conversation, and I asked him if he would allow us to run his picture on the page—on the front page of our paper. Mr. Hawes told me at that time that he felt that he had spent very near all the money that he could possibly spend for publicity, and I said, "Well, we would like to have—we would like to have your picture, and Mr. Turner would write something or would say something toward the good cause," or words to that effect. I just can't remember—words to that effect. I says, "Mr. Turner has known you a long time, and perhaps he could write up some sort of a sketch or something that would appeal to you," and I said, "We would do that—we could give you the front cover of the paper in that little space where Shakespeare's picture is in and give you a nice write up inside."

Q. Did you explain to Mr. Hawes that this picture and what you have said you wanted to write for him or would have written for him would be an advertisement?

Mr. BARRETT. Now, wait a minute. I am going to suggest right now that you desist from asking leading questions and suggesting the answers to the witness. You have done that repeatedly, and I want to particularly caution you in the present instance.

(Question read.)—A. I said it would be in the nature of a write up.

Mr. FEIGENBAUM. Was the compensation discussed, or, rather, was anything said as to what payment, if any, was to be made by Mr. Hawes for this write up and the picture?

Mr. BARRETT. Just a minute, please. I object to that question, because it is based upon an assumption that there was to be compensation paid, and I [illegible] to it further because it is leading and suggests the answer.

Mr. FEIGENBAUM. I will withdraw that question, then, and ask you, Mr. Gutman, was any payment to be made of any kind by Mr. Hawes for that?

Mr. BARRETT. I object to that question in connection with the objection I have made to the other question, counsel having suggested the nature of the answer. It is very easy for him to withdraw and ask another question, and I make the same objections to that question as I did to the previous question.

Mr. FEIGENBAUM. You can answer now.

A. I suggested to Mr. Hawes that there would necessarily have to be compensation and I said possibly he could give us something between a hundred and two hundred dollars for this write up, and he told me that at this time it was out of the question; that he wouldn't—I asked him would you sign a contract—would you give us a writing, and I believe I submitted a little blank form we had at that time, and he said, No, sir; I have just got through telling you I have used up my money and I don't feel like I want to sign anything; but he says, Harry Hawes—he said, Harry Turner knows me a long time; we are friends, and if he chooses to put that on there, he says, let him go to it, or something to take effect, that I would see Harry personally—that is his exact words.

Q. Did he say what he would see Harry Turner for, with reference to the advertising or the compensation?—A. Well, I think that Mr. Hawes and Mr. Turner are friends of 20 years' standing, possibly longer than that, and Mr. Turner in that time has said some very nice things about Mr. Hawes in his paper, and they were very good friends, and Mr. Hawes—I imagine knows that that would have to be taken care of——

Mr. Barrett. Wait a minute. I object to what you might imagine. You might state the facts. I object to your imagining and thinking.

A. Mr. Hawes said——

Mr. Barrett. Just a minute. Don't state your imagining and thinking.

A. I am going to tell what Mr. Hawes said to me. That is fair enough.

Mr. Barrett. Yes.

A. Mr. Hawes told me he would see Harry Turner personally.

Mr. Feigenbaum. As to what?

A. As to this write up in the thing, and that was the only time that I saw Mr. Hawes. Now whether—the picture appeared in the paper.

Q. The picture did appear.

Mr. Barrett. Just a minute. That is voluntary.

A. I am only telling what actually happened. I don't know either of you gentlemen. I never met any of you before. I don't know Mr. Bogy, and I don't know Mr. Hawes.

Mr. Barrett. All right.

A. I was a solicitor on this paper, and when I brought in a contract I got my commission out of it. That was my only interest in the matter.

Mr. Feigenbaum. You get any commission on this to date?

A. No, sir.

Q. Has Mr. Hawes been billed for this, if you know?

Mr. Barrett. I object to that as being improper.

Mr. Feigenbaum. Has Mr. Hawes been billed for this?

A. I don't know of my own knowledge. I only know that I haven't been paid my end of it. I asked Mr.——

Mr. Barrett. That will do; just answer the question, please.

Notary Public. The question is if you received any commission?

A. No, sir.

Mr. Feigenbaum. Did Mr. Hawes say to you at any time during your conversation whether or not he would pay Mr. Turner for this?

A. He did not. He told me he would see Harry Turner personally about this matter and he would take care of it—that is all; that he would talk with Harry about it. If of Harry Turner's own choosing—if he felt he would like to give him some publicity, he says, I will talk to Harry and see Harry Turner about it. Those are his exact words.

Q. Then, as far as you know, or do you know, whether any actual contract was ever made whereby Mr. Hawes was to pay for this advertisement?—A. We talked that—called that—when I spoke to Mr. Hawes that day—I think Mr. Murphy—now, I am not positive about that, but Mr. Murphy got a cut from somebody.

Q. You didn't get the cut yourself?—A. I didn't have anything to do with it any further than that; no, sir.

Q. Then, you don't know what transpired after that and as to what other arrangement Mr. Hawes and Mr. Turner had?—A. No, sir; because I left the employ of the paper just about that time—about a few days later.

Q. And you don't know whether any other arrangements were made as to the payments for this?—A. I do not; no, sir.

Q. When you left the office of Mr. Hawes, did Mr. Hawes or anyone tell you whether to put this in or not?

Mr. Barrett. I submit he has gone all over that.

Mr. Feigenbaum. I asked him what was the last word.

The Witness. Mr. Murphy must have——

Mr. Barrett. Never mind what Mr. Murphy said.

The Witness. Listen——

Mr. Feigenbaum. You don't know what he is going to say.

The Witness. Let me explain that—if it is wrong, all right. When I left Mr. Hawes's office with Mr. Murphy, and I have told you just what Mr. Hawes said—now, if Harry chooses to put something in—publicity for me, I will see him. Then he said—after that, I know nothing, because I had nothing more to do with it. I don't know who done the write up or anything else or who got the cut or anything like that.

Mr. FEIGENBAUM. As far as you know, no contract had been entered into up to the time you left Mr. Hawes?

A. That is all there is to that.

Q. After you left, you had nothing more to do with it?—A. Nothing more to do with it.

Q. As far as you know there was nothing agreed to be paid or nothing else?—A. I am here to tell what transpired and nothing else.

Mr. FEIGENBAUM. I just want what you personally know. That is all.

Cross-examination by Mr. HAWES:

Q. Mr. Gutman, you were employed by the Much Ado Co.?—A. I were; yes, sir; just on the special edition before Christmas.

Q. At that time?—A. Yes, sir.

Q. And you know that the owner and proprietor of Much Ado is Harry Turner?—A. I know he writes the stuff there; I don't know who the owner of it is.

Q. Well, you have read the paper in which it says, "Harry Turner, editor"?—A. Yes, sir.

Q. And your bills are made out and signed by Harry Turner?—A. That I don't know, Mr. Hawes.

Q. You don't know?—A. No, sir. I know that he only writes the stuff there.

Q. Of course, as far as you know, he is the owner, proprietor, and manager of this paper Much Ado?—A. I wouldn't say owner, because I don't know who is the owner.

Q. But he is the manager and the head man?—A. Yes, sir.

Q. What was the first time you called at my office?—A. Well, I believe it was about four weeks previous to the time that we found you in—Mr. Murphy and I. We called the young lady there at your office.

Q. About four weeks?—A. I think so; yes, sir.

Q. Were you alone or with Mr. Murphy?—A. We were together.

Q. You were together?—A. Yes, sir.

Q. You met my secretary, Miss Feldkamp, at that time?—A. I think so.

Q. You discussed this advertising with her, did you not?—A. Yes, sir.

Q. Did she not tell you that Mr. Hawes wouldn't take any advertisement—said he couldn't?—A. Well, I don't remember.

Q. Well, we will go on and I will help you out a little. When did you call the next time?—A. The time that I called with Murphy when we found you home.

Q. You were there only twice with Murphy?—A. I think so; yes, sir.

Q. The first time you talked to Miss Feldkamp, did you not?—A. I think so.

Q. It was in the anteroom?—A. Yes, sir.

Q. You stated to her the nature of your business?—A. Yes, sir.

Q. Now, Mr. Gutman, I only want you to answer to the best of your recollection. Did she not tell you and Mr. Murphy at that time that Mr. Hawes could not advertise or do any advertising?—A. I don't remember exactly.

Q. Well, what did she say?—A. She said Mr. Hawes was out of town, and she said as soon as Mr. Hawes came back she would take it up with him, and we reported back to Mr. Turner and he says to Mr. Murphy to see—to go back again down there, he says, Murphy, and see Hawes himself. That is what he says.

Q. That was the first time?—A. Yes.

Q. Now, the second time.—A. That was the only instruction he ever gave, to see you personally.

Q. Not instructions, but the second time you were down there, did you talk to Miss Feldkamp then?—A. The second time I was there with Murphy?

Q. Yes.—A. I think we walked up to her and you happened to be sitting in that far office there and she introduced—she told us you were in and we come over.

Q. Then you didn't state your business to her again on that occasion?—A. I don't—possibly we did and possibly we didn't; I can't remember, Mr. Hawes.

Q. Now, in your conversation with me, Mr. Gutman, didn't I explain to you in detail that I had to make four reports to the Government?—A. I think you did, sir.

Q. And that at that time amounted to $570, or some such amount?—A. You said you were very nearly—you had very nearly used your allotment or proportion, or whatever you called it.

Q. Now, I am not going to try to lead you—I just want to get the facts, because you have testified correctly so far. Didn't I state to you that I had made my final report of $570, and that the total amount that I could expend under the law was $640?—A. I believe you mentioned some figure, but what they were I don't remember.

Q. If you do not remember the figures, that statement is correct?—A. I remember that conversation; yes, sir.

Q. That I couldn't advertise, because I had exceeded my limit in my report to the Government?—A. Well, I don't know about exceeded. You said——

Q. Would exceed the amount?—A. You said that you had no money to spend; that you were near up to your limit at that time. That was your talk.

Q. Didn't I also tell you, Mr. Gutman, that I had not put a single advertisement in a single newspaper in St. Louis, and that if an advertisement appeared in Turner's paper that it would make the other local newspapers think I was a liar and had deceived them?—A. I don't remember that.

Q. Well, didn't I say that I didn't want it because I hadn't put my advertisement in other papers, and that would get me in trouble with the other newspapers? I want you to think about it.—A. I just don't remember that.

Q. You don't remember that?—A. No, sir.

Q. Now, regarding my conversation about—statement about seeing Mr. Turner after refusing to subscribe and your telling me that Turner and I had been friends for a good many years, didn't I say to you that I would see Turner about this myself?—A. Exactly those words.

Q. That I would see Turner—— A. Yes, sir.

Q. And explain to him?—A. Well, you said to me, "I will see Turner myself about that."

Q. Yes. Now, wasn't—— A. I would see him personally, you said.

Q. I would see him personally?—A. Yes.

Q. After telling you that I could not subscribe because I had exceeded my amount, or would exceed it, and explained the reasons why, and you were speaking about this friendship, and didn't I say, "I will see Turner myself about this matter and explain it to him?—A. That s exactly what you said.

Q. Mr. Murphy was with you on the two occasions that you called at my office?—A. Yes, sir.

Mr. Hawes. That is all.

Mr. Feigenbaum. That is all.

—— ——.

Subscribed and sworn to before me this —— day of ——, 1921.

My commission expires —— ——.

—— ——.

Notary Public.

PAUL MURPHY, of lawful age, being produced, sworn, and examined on the part of the contestant, deposeth and saith:

Direct examination by Mr. Feigenbaum:

Q. Please state your name in full.—A. Paul Murphy.

Q. What is your address?—A. 5575 Delmar.

Q. Mr. Murphy, what is your occupation at the present time?—A. I am with the Much Ado Publishing Co.

Q. In what capacity, Mr. Murphy?—A. Soliciting business.

Q. Are you the advertising solicitor?—A. Yes, sir.

Q. For that publication?—A. Yes, sir.

Q. And who is the manager and editor for that?—A. Mr. Turner—Harry Turner.

Q. You are employed by that company?—A. Yes, sir.

Q. What do your duties consist of?—A. Soliciting business.

Q. Do you attend to getting up any of the write-ups, exclusive of any advertisements?—A. Sometimes; yes, sir.

Q. Sometimes you do. What do you mean by soliciting business, so that we may all understand it?—A. Well, for instance, calling on an advertiser and people who are interested in soliciting subscriptions sometimes, too—subscribing for the paper and business in general and soliciting in a general way.

Q. Do you follow the financial end of it?—A. No; not altogether, I don't. I solicit business occasionally and do some collecting.

Q. What I want to get at is this: Do you solicit business, such as advertisements, subscriptions, etc.?—A. Yes, sir.

Q. Or do you also go out and get information on which articles are based, such as a reporter would do?—A. I do; yes, sir.

Q. You do some of that, too. Mr. Murphy, do you know Mr. Hawes?—A. Yes, sir; I met him.

Q. Who is present in the room now?—A. Yes, sir.

Q. How long have you known him?—A. Oh, I have known him for several years, by reputation; never met him personally until the time of this—shortly before election—about 30 days before election.

Q. And did you call on Mr. Hawes then?—A. I did; yes, sir.

Q. And for what purpose did you call on Mr. Hawes?—A. Well, regarding the publicity and advertising for the election—coming election—which we did a number of other people.

Q. You called on other candidates, too?—A. Yes, sir.

Q. And while calling on various candidates for obtaining things such as advertisements, you called on Mr. Hawes, too?—A. Yes, sir.

Q. And that was how long before the election, about, the first time?—A. Well, the first time, about six or seven weeks.

Q. Six or seven weeks?—A. Yes, sir.

Q. Did you find Mr. Hawes in?—A. Well, I made a couple of attempts and finally I talked to him one day—just he and I together.

Q. And how long prior to the election was that, as near as you can place it?—A. Well, it was some—it was about six weeks, I should say, or seven weeks before the election.

Q. Was Mr. Gutman with you then?—A. No, sir; not the first time.

Q. You were then alone?—A. Yes, sir.

Q. What conversation took place between you and Mr. Hawes at that time?—A. Well, of course, I called on Mr. Hawes in my business, just the same as I called on a number of others, and Mr. Hawes said that he had—I believe at that time he had spent a good deal of money and he wasn't doing any advertising—something like that. He was only allowed $600, or whatever he had to spend or something along those lines. However, he felt very friendly toward the Much Ado paper and Mr. Turner, the editor. It seems as though Mr. Turner has always been friendly to him and nice to him and he had felt very friendly toward the paper and at that time he wasn't ready to do anything, so he—I believe he said he wanted to talk to Mr. Turner about something connected with it and that he had some matter he would like to take up with Mr. Turner. So then I reported back to Mr. Turner what he said and Mr. Turner said——

Mr. BARRETT. Just a minute, please. Don't testify what Mr. Turner said.

Mr. FEIGENBAUM. Unless it is relevant to why you called.

A. It was relevant to why I called.

Mr. CUMMINGS. It would be pure hearsay, unless Mr. Hawes was present.

A. Mr. Hawes was not present.

Mr. FEIGENBAUM. You reported to Mr. Turner?

A. Yes, sir.

Q. And did Mr. Turner send you back again to see Mr. Hawes?—A. Mr. Turner sent me back; yes, sir.

Q. How long was that before election when you went back there?—A. Well, that publication came out on November 1. It was somewhere around about three or four weeks before that.

Q. Were you accompanied by any one then?—A. Yes; Mr. Gutman.

Q. Mr. Gutman was with you then?—A. Yes.

Q. Now, did you find Mr. Hawes in on that occasion?—A. Well, we found him in after going there a couple of times; yes, sir.

Q. And did you have a conversation with him regarding the same matter?—A. Yes; we talked with him regarding the matter.

Q. Did you reach any conclusion?—A. Well, we talked it over and Mr. Hawes said that at that time he had spent so far $570 and under the law he was allowed $600 to spend for publication; that he wanted to do something for the Much Ado, but he referred to the Newberry case and it was a very unfortunate affair; that he couldn't do what he would like to do personally—that is, in the campaign, he said. We told him that we had several other people who were campaigning for office and we would like to be able to help him all we could, and we talked with him—he asked us what it would cost and we told him $200.

Q. What did he say?—A. Well, he said, "You see my position, gentlemen." That is the answer he gave us and we said, "Well, we would like to be able to report the matter to the office. Mr. Turner has asked us to handle it," and he said, "Well, I would like to do something for them and will do something," and we asked him what he meant by saying he would do something and he said he would talk over the matter with Mr. Turner, but he couldn't spend $200, and he felt kindly toward the paper, and, in the same spirit, we left and he was to see Mr. Turner about it. So we left after that. That was the end of our conversation.

Q. After that did you have any further conversation with Mr. Hawes yourself?—A. No more; no, sir.

Q. And did you see Mr. Hawes again?—A. No, sir.

Q. Did you personally obtain any cut?—A. I went to Mr. Hawes's office and he wasn't in. His secretary—I told her we wanted to run the cut of Mr. Hawes, and his secretary told me that they didn't have a photo or cut, that I could probably get one from some of the papers; so I went over then to Mr. Walsh on the fourth floor of the Carleton Building—Judge Walsh, and he gave me—we went to the Times and they gave me a cut and we run it and took Shakespeare's picture off and run it instead.

Q. Mr. Murphy, do you know what took place, or what transpired, if anything, between the time that you say you left him on the second occasion, left Mr. Hawes, and the time that you inserted this cut, with reference to any arrangements made?—A. No, sir; I do not.

Q. You understood that any further arrangement would be made between Mr. Turner and Mr. Hawes himself?—A. Well, Mr. Hawes said he would do something for us, and I felt quite sure if there was any way that he could take care of us on the matter that he would, and so it was a kind of certain amount of good will went with the thing—along with that on the part—I know Mr. Turner was very friendly toward him at that time.

Q. Have you received any commission on that?—A. I—in the crediting up—that was in November and December, when I settled with the office out there——

Mr. Barrett. We object to that as wholly immaterial.

A. I had a settlement with the office and they—of course, they check up on everything done that is on the books as to the amount of commission, and so Mr. Turner and I agreed on——

Mr. Barrett. Just a minute. I am going to object to this line of testimony as pure hearsay.

Mr. Feigenbaum. All right. There is an objection to your going into the conversation. Will you tell us just whether or not you received your commission, and if so, how much?

Mr. Barrett. Wait a minute. I object to the form of that question. It assumes that he was to receive some.

Mr. Feigenbaum. He just got through saying he had some settlement and I want to know in that settlement if you were paid anything for this cut of Mr. Hawes?

Mr. Barrett. I object to that because the contestee is not bound by that.

Mr. Feigenbaum. All right; you may answer.

A. If you will—in the interim, I will explain something, if it doesn't enter into the case. That is the rule that newspaper men have for allowing commissons—they allow the solicitor his commission, whether he asks——

Mr. Barrett. Wait a minute. I am going to object to that line of testimony as to the rule of the newspapers.

Mr. Feigenbaum. Regardless of the rule, now, tell us whether you received your commission?

A. Mr. Turner allowed me $33 commission on the ad, which Mr. Gutman was to receive half of, but in the next month of January, it was charged back to me on the books.

Mr. Barrett. I move that the entire answer of the witness be stricken out, because it is not binding upon the contestee.

The Witness. It was agreed to by the parties.

Mr. Barrett. Contestee was not present and he is not bound by an arrangement made by this witness and Mr. Turner.

Mr. Feigenbaum. Do you know whether a bill has been sent to Mr. Hawes for this advertisement?

Mr. Barrett. I object to that question, because no contract has been shown here.

Mr. Feigenbaum. All right. You may answer the question.

(Question read.)

A. I believe there was one sent.

Q. Was any reply received that you saw from Mr. Hawes?—A. No, sir; I didn't see the communication.

Q. You didn't see the communication?—A. No, sir.

Q. If any communication was sent, who would have that?—A. The files would be in the files at the office.

Q. But you haven't seen any and you don't know what communications there were?—A. I don't know about the communications.

Q. You don't know if any were received at all?—A. No.

Mr. FEIGENBAUM. I believe that is all.

Cross-examination by Mr. HAWES:

Q. Mr. Murphy, how many times do you think you called at my office?—A. Several times, Mr. Hawes; I don't remember exactly how many.

Q. Well, it is rather important for you to fix your recollection. You saw me twice.—A. I saw you once, and another time with Mr. Gutman; yes, sir.

Q. Yes; but how many times in between that time did you call?—A. Oh, a good many times.

. Q. Well, three other times, or four times, do you think?—A. Oh, I called more than that to see you, but you weren't in, or something, and there was somebody else, I believe—your secretary, or something.

Q. You talked to my secretary, Miss Feldkamp?—A. Yes, sir.

Q. Did you state the object of your business to her on several of those occasions, Mr. Murphy?—A. Well, I told her something about wanting to see you regarding publicity, I believe; yes, sir.

Q. Do you know Harry Turner's signature?—A. Yes, sir.

Q. Is that his signature?—A. Yes, sir.

Mr. FEIGENBAUM. Let me see that. [Mr. Hawes hands letter to counsel for contestant.]

Mr. HAWES. Mr. Murphy, the first time you called at my office do you remember my taking out of my desk copies of my report to Washington?

A. Yes, sir.

Q. I think I showed you some—three different reports.—A. Yes, sir.

Q. And that the last one showed I had spent $570?—A. Yes. sir.

Q. And I stated to you at that time the total amount that I could spend was $640?—A. Six hundred, I believe I understood.

Q. Well, six hundred. It was six hundred and forty. Did I tell you at that time—this was prior to the election, wasn't it?—A. Yes, sir.

Q. And that I expected Mr. Bogy would contest my election—A. Yes. sir: you did.

Q. I told you, I believe, that Mr. Bogy stated on the day he received his nomination that he was going to contest this election?—A. Yes. sir: that is what you told me.

Q. Do you remember whether I told you that Mr. Bogy had made these statements to Alex. Vest, a son of Senator Vest?—A. I remember some statement, but I don't remember who it was to. I remember in the conversation you mentioned an article—I don't remember the name of the gentleman who you talked to, but I remember the statement came up.

Q. And I said to you if any publication appeared exceeding the amount allowed me by law, that Bogy would see it and it would endanger my seat in Congress?—A. That is just what you said. You said I don't want to get mixed up like that man in Michigan.

Q. Yes: we had a long discussion——A. About Senator Newberry.

Q. About Senator Newberry. And I told you at the time that I would see Mr. Turner and explain this to him as I had to you?—A. Yes. sir.

Q. Now, the other time you saw me and talked to me about this matter, you were with Mr. Gutman?—A. Yes, sir.

Q. But I took you over practically the same matter with Mr. Gutman that I did with you?—A. Well, there was something along those lines. I just forget what it was.

Q. Telling you I had already spent $570 and I had only $640 to spend?—A. Yes, sir.

Q. And Bogy had been running around town telling people he was going to contest?—A. Somebody wrote you a letter, or something like that.

Q. Do you remember my telling you at that time that Bogy was relying upon a big Republican Congress to seat him and that he had stated to me that men were frequently seated on contests from the city of St. Louis?

Mr. Feigenbaum. Now, I object to that as being entirely improper as to what contestee stated to this witness, as being purely self-serving and hearsay.

Mr. Bogy. I would just leave state what I did say.

Mr. Hawes. I object to any interruption in this cross-examination.

Mr. Feigenbaum. I submit that is proper interruption.

Mr. Bogy. There is a time to interrupt.

Mr. Hawes. I object to contestant testifying except he testifies under oath and subject to cross-examination.

Mr. Feigenbaum. I submit that is exactly what contestee is now doing, testifying and giving a statement not under oath.

Mr. Bogy. Not under oath.

Mr. Hawes. I am giving the reasons that I told—why I told Mr. Murphy at that time that I could not give this advertisement.

Mr. Barrett. I suggest further that the object of this line of testimony on the part of contestee is for the purpose—was for the purpose of explaining to the witness, who called on him at that time, that he could not exceed his limit and in the probability of a contest, if he did attempt to do it, it would be disclosed and endanger his seat and for that reason the entire conversation is proper.

Mr. Hawes. Well, we will forget about it. Now, Mr. Murphy, without delaying you too long, I went over practically the same ground the second time with you and Mr. Gutman that I did the first time with you?

A. Yes, sir.

Q. And at the conclusion of it I told both of you that I would see Mr. Turner and talk the matter over with Mr. Turner?—A. Yes, sir.

Q. Meaning at that time I would give him the same explanation that I had given to you?—A. Well, of course, I couldn't say just what would take place between you and Mr. Turner, because I wouldn't—I don't know—I don't know just what happened between you and Mr. Turner. I couldn't testify to that, because I don't think it would be right for me to.

Q. Well, as a matter of fact, I hadn't seen Mr. Turner for a month before the election——A. You did say that.

Q. And I didn't see Harry until two weeks after the election and had no conversation with him on the telephone or at any other time prior to the election.

Mr. Feigenbaum. Just a moment before you answer that. I submit that no witness—this witness or anybody else—is in a position to say what conversations contestee may have had with some one else, because it hasn't been shown that this witness was with Mr. Turner every hour of the day for a period of six weeks. I don't think this witness will undertake to state when Mr. Turner might have been in conversation with contestee.

Mr. Hawes. Mr. Murphy, did you volunteer this information—you and Mr. Gutman to come up here, or ask to be subpenaed to be here to-day?

A. I should say not.

Q. I want to know. Then you were brought here by Mr. Bogy?—A. Yes.

Mr. Feigenbaum. Subpœnaed?

A. Subpœnaed.

Mr. Hawes. Subpœnaed by Mr. Bogy?

A. Yes.

Mr. Hawes. Do you know whether Mr. Turner——

A. I know he was subpœnaed.

Q. You don't know whether he volunteered to come?—A. He did not.

Q. He was brought under subpœna?—A. Yes, sir; positively. Gutman was also the same way.

Redirect examination by Mr. Feigenbaum:

Q. Did you or Mr. Gutman, that you know of, tell Mr. Turner that you had received an order for an advertisement from Mr. Hawes?—A. No, sir.

Q. You didn't tell Mr. Turner that?—A. No, sir.

Mr. Feigenbaum. That is all.

——— ———.

Subscribed and sworn to before me this —— day of ———, 1921.

Frank B. Grodzki, *Notary Public.*

My commission expires September 9, 1921.

(Thereupon, at 3.30 p. m., a recess was taken for 15 minutes, in order to allow all parties to appear at the office of the board of election commissioners in the city hall, at which place depositions were resumed, as follows:)

GLENDY B. ARNOLD, being recalled, further testified on behalf of contestant, as follows:

Direct examination by Mr. FEIGENBAUM:

Q. Judge Arnold, in your official meetings of the board of election commissioners in St. Louis are minutes kept of all proceedings?—A. We keep minutes of all official acts of the board.

Q. Now, Judge, have you a complete set of the minutes of the decisions and actions of your board beginning with January 11, 1921, and including this day, being the 28th day of January, 1921?—A. Yes, sir.

Q. I should say in that request relating to the Bogy-Hawes contest?—A. Yes, sir.

Q. Can you furnish us with a certified copy of such minutes?—A. Yes, sir.

Mr. FEIGENBAUM. We now ask that the contestee stipulate with us that this cetrified copy of the official minutes of the board of election commissioners, referring to this contest, beginning with January 11, 1921, to January 28, 1921, inclusive, may be marked "Contestant's Exhibit D" and given to the notary by the chairman of the board of election commissioners and made a part of this deposition of Judge Arnold's, and that a certified copy of such minutes be furnished to contestee and one set of certified copies be furnished to contestant, all of which shall be originals, and the one marked "Contestant's Exhibit D" be a part of this deposition and considered as identified by this witness.

Mr. CUMMINGS. Contestee agrees to that stipulation, and that all copies shall be marked "Exhibit D."

Mr. FEIGENBAUM. Judge, I show you a set of sheets and ask you in a general way to tell us what those are, so that they may be referred to hereafter.

A. These sheets show the result of the recount of the ballots by the clerks of this office in this contest; also they contain a copy of the abstract of votes on file in this office, compiled from the official returns of the judges and clerks at the election of November 2, 1920, showing the vote received by each candidate for Congress in each precinct and the totals of said candidates for the entire district. The certificate attached to these sheets is our certificate and explains the contents of the sheets. The certificate is attached to the six sheets.

Q. The names appearing as having been signed on these certificates are Glendy B. Arnold, chairman; Charles J. Lammert, member; Vincent Dempsey, member; and O. E. Buder, secretary and member. Do you know that those are the signatures of the several members?—A. Those are the signatures.

Mr. FEIGENBAUM. I will ask that they be marked "Contestant's Exhibit E" and made a part of the record and this deposition.

(Said certificate was marked "Contestant's Exhibit E" and is herewith returned and made a part of this deposition.)

Q. Now, is part of these recapitulation sheets which have been referred to as "Exhibit E" made from memoranda sheet copies in this office during the recount by clerks appointed by the board in this contest?—A. Yes, sir.

Q. Judge, I show you this set of sheets and ask you what they are—without going into detail—in a general way?—A. They are the data which was compiled by the clerks in this contest from the ballots and the poll books during the recount of the ballots.

Mr. FEIGENBAUM. I ask that these sheets be marked "Contestant's Exhibit F" and made a part of this deposition and record.

(Said sheets offered and introduced in evidence were marked "Contestant's Exhibit F" and are herewith returned and made a part of this deposition.)

Q. How many precincts do this set of sheets cover?—A. They cover all the precincts in the eleventh congressional district.

Q. Being how many in number?—A. One hundered and fifty-five.

Mr. FEIGENBAUM. That is all.

Cross-examination by Mr. HAWES:

Q. Judge Arnold, in justice to yourself, I desire to state that a Mrs. Caulfield in her testimony last night stated that you had either said to Bogy or to her something to the effect that this whole election was crooked and that your own expression was that it was horrible, that there were all kinds of irregularities, but that they were very carefully concealed and that you stated to her at about 5 o'clock, at which time a man was bringing in dinner, which he said was for Mr. Dempsey and myself. Do you know anything about a dinner that came in at that time?—A. Yes—not at that time, because I don't think that ever did occur. We ordered dinner here on one or two occasions for Mr. Stansbury and Mr. Claudius, who had to stay here during the absence of the clerks. We adjourned at 5 o'clock in the evening and the clerks went out to dinner and we had to have watchers in the office to guard the ballot boxes and the ballots and poll books, which were laying around on the tables in the office and all of the data that was being compiled during the recount and we assigned an equal number of Democrats and Republicans in the office while the recount clerks were out getting something to eat.

Q. Judge Arnold, for your benefit, it is just a question of whether these meals were brought in for Mr. Claudius and Mr. Stansbury, or whether they were brought in for Mr. Dempsey and Mr. Hawes.—A. No meals were brought in here for Mr. Hawes. I only have a recollection of one meal being brought here for Mr. Dempsey.

Q. That was during the week?—A. That is all, and he didn't eat all of that.

Q. Now, as to the balance of my question—did you make such a statement or anything substantially like that statement?—A. No; that is absolutely false—absolutely false.

Q. Did you have any conversation about this recount with Mrs. Caulfield or Mr. Bogy at any time as to the general situation in the contest?—A. I had no conversation with Mrs. Caulfield about the recount. I never spoke a word to her about it.

Q. What conversation did you have with Mr. Bogy, if any?—A. Well, Mr. Bogy, during the progress of the contest, discussed a great many matters—different matters—I don't recall any particular thing now, during the progress of the contest and the way we were conducting it.

Q. But it related to the progress of the contest?—A. Yes. I made no comment to him about the fairness of the election at any time.

Q. On the contrary, you stated on your direct examination that this was an unusually quiet, orderly election, I believe?—A. I could never have told him, or anybody else, that I thought the election was—in this office was the result of fraud, because I never had such an impression in my mind.

Mr. Hawes. That is all.

Mr. Feigenbaum. That is all.

——— ———.

Subscribed and sworn to before me this —— day of ———, 1921.

Frank B. Grodzki, *Notary Public.*

My commission expires September 9, 1921.

EXHIBIT D

STATE OF MISSOURI,
City of St. Louis, ss:

We, the undersigned, Glendy B. Arnold, chairman and member; Charles J. Lammert, member; Vincent Dempsey, member; and Oscar E. Buder, secretary and member, composing the board of election commissioners within and for the city of St. Louis, State of Missouri, hereby certify that the following is a true, correct, and complete copy of the minutes of the board of election commissioners, pertaining to the contest of Bernard P. Bogy, contestant, *v.* Harry B. Hawes, contestee for the office of Representative in the Sixty-seventh Congress of the United States of America from the eleventh congressional district of Missouri.

In witness whereof, we have hereunto set our hand and affixed the official seal of the office this 28th day of January, 1921.

Glendy B. Arnold,
Chairman and Member.
Chas. J. Lammert,
Member.
Vincent Dempsey,
Member.

Attest:
[SEAL.]

O. E. Buder,
Secretary and member.

ST. LOUIS, MO., *January 11, 1921.*

A meeting of the board of election commissioners was this day held at the office of the board.

All members present.

All members of the board were present in response to a subpœna issued by Frank B. Grodzki, a notary public, within and for the city of St. Louis, Mo., in re the contest of Bernard P. Bogy, contestant, *v.* Harry B. Hawes, contestee, for the office of Representative in Congress for the eleventh congressional district of Missouri.

There appeared before the board Mr. Bogy and his attorney, Cornelius T. Bauer; Mr. Harry B. Hawes and his attorneys, Messrs. Campbell Cummings and Peter T. Barrett; also Mr. Frank B. Grodzki, the notary public.

Chairman Arnold read the subpœna to those assembled and after reading same asked the pleasure of those present. A discussion was then had as to what information is desired by the contestant in this recount.

Mr. Harry B. Hawes then read the following communication to the board:

To the BOARD OF ELECTION COMMISSIONERS,
City of St. Louis, Mo.

GENTLEMEN: I do not desire to interpose any technical objections or cause any delay in the opening of ballot boxes and the counting of the ballots in the eleventh congressional district contest instituted by Mr. Bogy.

Mr. Bogy waited until Saturday, December 18, at about 1.30 p. m. to file notice of contest. This was his last legal day for filing.

On the following Monday afternoon, December 20, I delivered the answer. He has 40 days from that date in which to present evidence in support of the allegations in his notice of contest. I desire the contest to be thorough and to extend to every voting precinct.

I therefore urge the election commissioners to expedite the recount so that he will have opportunity to present all of his alleged evidence before the expiration of the time for such submission, subject to the competency, materiality, and relevancy of such testimony.

Yours, very truly,

HARRY B. HAWES.

which letter Mr. Hawes requested be embodied in the record of this case.

The chairman called the attention of those present to the fact that the subpœna did not request a recount, merely requiring the production of the ballots, poll books etc. It was then agreed that a stipulation be drawn, signed by all parties to this contest, and their attorneys, requesting the board of election commissioners to make this recount, whereupon the following stipulation was agreed to and duly signed:

STIPULATION.

ST. LOUIS, MO., *January 11, 1921.*

It is stipulated and agreed between contestant and contestee and their respective counsel that the board of election commissioners shall open the ballot boxes used in the eleventh congressional district in the election in contest and recount said ballots on the office of Representative in the Sixty-seventh Congress for the eleventh congressional district of Missouri, and shall certify the result of said recount showing the number of ballots cast and counted for the contestant and contestee on the respective ballots cast at said election, and the number of ballots cast for the contestant and contestee and rejected by the judges and clerks of election.

It is further stipulated and agreed that in case the validity of any ballot for either the contestant or contestee is challenged the question shall be decided by the board of election commissioners.

It is further stipulated and agreed that during the recount of said ballots no comparison shall be made of the ballots with the poll books.

Provided that this recount hereinabove provided for is to be taken during the time allowed for the contestant to present his evidence and shall not be charged to the time of the contestee.

Provided, further, that nothing in this stipulation shall preclude the contestee from making an examination of the ballots during the 40 days' time allowed to him by law.

Provided that the contestee does not waive any objections he may desire to make as to the competency, relevancy, or materiality of any testimony offered on behalf of the contestant, or shown in the recount.

Provided that the contestant does not waive any objections he may desire to make as to the competency, relevancy, or materiality of any testimony offered on behalf of the contestee, or shown in the recount.

It is further agreed and stipulated that all records made up or testimony taken in this case shall be in triplicate and each side shall be furnished true copies thereof as soon as transcribed or written, and certified to by the notary taking depositions.

Bernard P. Bogy, *Contestant.*
Cornelius T. Bauer, *Attorney for Contestant.*
Harry B. Hawes, *Contestee.*
Campbell Cummings, *Attorney for Contestee.*
Peter T. Barrett, *Attorney for Contestee.*

The method of conducting the recount of the ballots was then discussed and the plan offered by the chairman unanimously agreed to, which was to have the clerks in the office conduct the count, under the supervision of the board, by recounting the ballots and showing only the total number of votes received in the recount by the contestant and contestee and the candidates of the other parties at said election in contest, also to tabulate the ballots rejected by the judges and clerks of election and to enumerate and list disputed ballots, to wit: Those where there is any doubt on the part of the counters that they have been improperly marked and those having no corresponding number on the poll books and those having duplicate or triplicate numbers, also any other disputed ballots, all of which will be passed upon by the board of election commissioners. The form of making this recount, together with the oath of secrecy and the instructions to counters, were unanimously approved by the contestant and contestee and their respective counsel.

It was then agreed by the board that 10 tables be started at 9 a. m. January 12, 1921, in said recount.

Mr. Dempsey moved that the office conduct said recount between the hours of 9 a. m. and 9 p. m. until completed. No second to motion, it being agreed, however, that after the work progresses, and it is necessary and advisable to work after 5 p. m. such a motion would be entertained.

It was agreed that 30 additional clerks be hired to conduct this recount.

St. Louis, Mo., *January 12, 1921.*

A meeting of the board of election commissioners was this day held at the office of the board.

All members present.

The recount of the ballots in the Bogy-Hawes contest was this day started.

The attorney for the contestant requested of the board that certified copies of the poll books of the precincts in contest be furnished the contestant either while the count is going on or immediately upon completion of same. It was unanimously agreed by the board that certified copies would be made and furnished after the recount is finished.

It was agreed between contestant and contestee and their respective attorneys that the taking of depositions in this contest be continued from day to day until after the completion of the count.

It was reported to the board that on January 11 it was agreed between the contestant and contestee that each should be entitled to five watchers, but that this agreement was altered this day, it being mutually agreed that each side should be entitled to one watcher for each table at which the count is being taken, both sides to have watchers up to the limit of the number of tables, or as few as they desire.

The board this day appointed and commissioned the following-named persons as assistants to the board in this recount:

Democrats.—Geo. J. Kelleher, Frank J. O'Keefe, Jack Carroll, Edw. R. Hicks, Walter Grasear, Chas. Eddy, Leo Mier, Leo Corbett, E. J. Linchey, Wm. Herring, John H. Smythe, J. J. Walsh, J. Masterson, Louis A. Green, Jas. C. Quigley, Wm. Flannery, Thos. Leahy, John Slevin, Geo. B. Cassidy, Frank Benish.

Republicans.—J. C. W. Meyer, Thos. Powers, Wm. Drach, Hy. Sperflage, Emil H. Haase, W. J. Murray, Thos. Brown, Julius Silverstein, Wm. F. Bolte, C. H.

Demuth, Alf. H. Eismann, Louis Uhri, Otto Ens, Thos. Nesler, Arthur Harrison, John Menke, Roscoe Conklin, Sol. Feigenbaum, Fred Becker, F. A. Luchtemeyer, John Decker.

The following form of "Oath of secrecy," "Instructions to counters," and "Form of return on recount" were this day unanimously approved by both contestant and contestee and their respective counsel, to wit:

[Parties, attorneys, and clerks.]

St. Louis, Mo., ———, 1921.

In re contest Bernard P. Bogy, contestant, *v.* Harry B. Hawes, contestee, Representative in Sixty-seventh Congress from the eleventh congressional district of Missouri.

I, ——— ———, of lawful age, being duly sworn, on my oath do say that I will faithfully and honestly examine the ballots in the recount of the same in the aforesaid contest for Representative in Congress from the eleventh congressional district of Missouri, which were cast in certain precincts at the election held in the city of St. Louis, State of Missouri, on the 2d day of November, 1920, and that I will not, when inspecting the ballots in the election commissioners' office in the aforesaid contest, look at or inspect the same to any further extent than may be necessary to determine for whom the ballot was cast for said office of Representative in Congress from the eleventh congressional district of Missouri, and that I will not disclose, directly or indirectly, at any time, to any person, any information that I may derive or acquire in any manner whatsoever from an inspection of said ballots or from other persons who have taken this same oath, other than such as will appear in the record in this case, and except to such of the parties to this contest and their attorneys as have also taken and subscribed this same oath, or unless required to do so in a judicial proceeding, and that I will endeavor honestly and faithfully to inspect such ballots solely and only for the purpose of determining for whom said ballots were cast at said election for the office of Representative in Congress from the eleventh congressional district of Missouri.

——— ———.

Subscribed and sworn to before me this —— of January, 1921.

——— ———.

Secretary Board of Election Commrs.

INSTRUCTIONS TO COUNTERS.

1. Count the total number of ballots in the box. Count the total number of names on the poll books.
2. Go through all of the ballots and separate the numbered ballots from the unnumbered ballots.
3. Separate the ballots of the respective political parties into separate lots.
4. Count the ballots in the following order: Republican first, Democratic second, Socialist third, Socialist-Labor fourth, Farmer-Workers fifth, and Prohibition sixth.
5. Separate the scratched ballots from the straight ballots.
6. Count the straight ballots first and then the scratched ballots.
7. Ballots with no initials or with only one initial on the back thereof shall be counted as legal ballots, if numbered.
8. If there is any doubt as to whether any ballot has been properly marked, the clerks shall place said ballot in the envelope for the decision of the board of election commissioners. Also place in this envelope all ballots that have no corresponding number on the poll books and those that have duplicate or triplicate numbers, also all other disputed ballots.
9. Add to the count on the ballots in the box those received from absentee voters.
10. Count the number of rejected ballots in the "rejected ballot" envelope.

Board of Election Commissioners.

Bernard P. Bogy, contestant, *v.* Harry B. Hawes, contestee, Representative in Congress, eleventh district of Missouri.

Ward ——— , precinct ———.

	Total votes.	Rejected ballots.	Disputed ballots.
Republican: Bernard P. Bogy, contestant, received			
Democratic: Harry B. Hawes, contestee, received			
Socialist: William O. Long received			
Socialist-Labor: Joseph Spalti received			
Farmer-Workers: E. W. Allen received			
Prohibition: ——— ———, received			

Number of ballots in the ballot box, ———.

Total number of names on the poll books, ———.

——— ballots containing one initial for Bogy.

——— ballots containing no initial for Bogy.

——— ballots containing one initial for Hawes.

——— ballots containing no initial for Hawes.

Recount made by ——— ——— and ——— ———, Democrats; ——— ——— and ——— ———, Republicans.

The oath of secrecy was this day administered to the following-named persons: Frank B. Grodski, Bernard P. Bogy, Cornelius F. Bauer, Harry B. Hawes, Peter T. Barrett, Campbell Cummings, Glendy B. Arnold, Chas. J. Lammert, Vincent Dempsey, O. E. Buder, Emma J. Bobb, John H. Stansbury, Chas. Claudius, Henry Lange, Joe Canty, Chas. F. Eddy, John Decker, F. W. Luchtemeyer, and Fred Becker.

No. 1. Thomas J. Powers, Julius C. Liebig, G. J. Kelleher, J. C. W. Meyer.

No. 2. W. H. Drach, A. L. Rottman, Frank J. O'Keefe, H. Sperflage.

No. 3. John F Carroll, F. O'Reilly, L. J. Smith, E. H. G. Haase.

No. 4. E. R. Hicks, W. G. Murray, A. J. Butler, Thomas Browne.

No. 5. Julius Silverstein, W. Grasear, J. Slevin, Samuel J. Hewgill.

No. 6. J. J. Hurley, W. F. Bolte, L. Corbett, L. E. Mier.

No. 7. A. H. Eisman, W. H. Herring, O. Ebs, E. J. Linchey.

No. 8. L. A. Uhri, J. H. Smythe, W. Flannery, J. Menke.

No. 9. T. Nester, L. A. Green, D. H. Mund, J. J. Masterson.

No. 10. J. J. Walsh, A. M. Harrison, Thomas F Leahy, C. H. Demuth.

No. 11. F. F. Bemish, R. M. Conklin, G. B. Cassidy, S. Feigenbaum.

Hawes watchers: P. J. McNamara, M. J. Sullivan, J. J. Brogan, Andy Tanner, D. J. Casey, William F. Glynn, Mrs. J. Lennon, Mrs. J. W. Gander, Mrs. J. E. Burgess, Nellie Meehan.

Bogy watchers: John F. Burckly, M. J. Hartmann, Hy. F. Saller, Fred L. Becker, George Nieter, L. G. Heckel, John F. Jaeger, Myrtle Caulfield.

ST. LOUIS, MO., *January 13, 1921.*

A meeting of the board was this day held.

All members present.

The recount of the ballots in the Bogy-Hawes contest was this day continued.

The oath of secrecy was administered to the following persons: Hawes watcher, Mrs. Vollmer; Bogy watcher, J. W. McCluskey.

The board this day appointed the following-named persons as assistants to the board: H. A. Landry and James Harlow, Democrats; and administered to them the oath of secrecy in this contest.

The board then passed upon the disputed ballots, and the result of such examination showed that most of the cases were those of duplicate ballots, whereupon the board issued these additional instructions, to wit:

"SPECIAL INSTRUCTIONS.

"JANUARY 13, 1921.

"When the total number of ballots in the box equals or is less than the total number of names on the poll books, duplicate and triplicate ballots shall be counted accordingly as cast and not placed in the 'disputed-ballot envelope' or entered on the memoranda.

"This means that duplicate and triplicate ballots are to be referred to the board only when the number of ballots in the box is greater than the number of names on the poll book.

"BOARD OF ELECTION COMMISSIONERS."

ST. LOUIS, MO., *January 14, 1921.*

A meeting of the board of election commissioners was this day held at the office of the board.

All members present.

The board this day appointed William Weakley as Republican assistant to the board and administered to him the oath of secrecy in the Bogy-Hawes contest.

The recount of the ballots in the Bogy-Hawes contest was this day continued.

There being sufficient assistants employed to start another table in this contest, it was agreed that the twelfth table be started to-day.

The board this day appointed M. M. Jodd as Republican assistant to the board and administered to him the oath of secrecy in the Bogy-Hawes contest.

Board adjourned to meet January 15 in order to pass upon disputed ballots which were not passed upon this day, action on same being deferred until to-morrow.

ST. LOUIS, MO. *January 15, 1921.*

A meeting of the board of election commissioners was this day held at the office of the board.

All members present.

The recount of the votes in the Bogy-Hawes contest was this day continued.

The board postponed action on the "disputed ballots" until Monday, the 17th instant.

JANUARY 17, 1921.

A meeting of the board of election commissioners was this day held at the office of the board.

All members present.

The board then took up the matter of passing upon the disputed ballots in the recount of the vote in the Bogy-Hawes contest.

Mr. Harry Hawes addressed the board, requesting that wherever ballots had his name open and unerased but Mr. Bogy's name written in the space underneath, that they be counted for Mr. Bogy and where Mr. Bogy's name was unerased and his name written in that they be counted for him. Chairman Arnold stated that this could not be done, as it was a violation of the law, citing sections 5900 and 5909. Mr. Buder then stated that this question had been passed upon by the board at the first meeting when disputed ballots were presented to them, there having been such a ballot brought to their attention, and that Messrs. Arnold, Lammert, and himself had voted not to count such ballot, it being a "no vote." Mr. Dempsey having voted to count it for the party whose name was written in the blank space of the office on contest, and that after this section of the board the chairman addressed the counters, instructing them that all such ballots, where either the name of the contestant or contestee was unerased and another name was written in the space underneath, were not to be counted for either party in contest. Mr. Buder further stated that his request, coming at this late date when the count is all but completed, could not be acted upon by the board, as such ballots had all been passed upon by the counters according to instructions and would not come to the attention of the board, with the possible exception of a few isolated cases.

Mr. Bogy objected to this request of Mr. Hawes.

Mr. Hawes then stated, "I consider this an important matter, a very important matter, that the record show that I propose to the board that where Mr. Bogy's name has been written in or my name written in and the printed name on the ballot is not scratched that the ballot be counted for the party whose name is written in, and that Mr. Bogy objects to this and that the board has sustained his objection."

Mr. Bogy answered Mr. Hawes, stating that this matter had been passed upon by the board at a previous meeting.

Mr. J. W. Feigenbaum was this day appointed by Mr. Bogy as assistant counsel in this contest. The oath of secrecy was administered to him.

The board then passed upon the disputed ballots.

Mr. Hawes then stated to the board the facts he desired certified to in the return to be made by this board in the matter of this contest. A copy of his statement follows herewith:

We desire that the records of the board of election commissioners, in certifying the result of the recount in the Bogy-Hawes contest, shall contain the following statement of facts:

1. That the board of election commissioners is composed of four members, appointed by the governor of the State and confirmed by the State senate; that two of its members, Messrs. Buder and Dempsey, are Republicans, and that Messrs. Arnold and Lammert are Democrats.

2. That on the 11th day of January, 1921, there appeared at the election commissioners' office, at 10 o'clock a. m., Frank B. Grodzki, a notary public, a Republican selected by Contestant Bogy, and also Bernard P. Bogy, accompanied by his attorney, Cornelius F. Bauer; and there also appeared Contestee Harry B. Hawes and his attorneys, Campbell Cummings and Peter T. Barrett.

3. The board going into session with Frank B. Grodzki present, the chairman of the board asked Contestant Bogy and his counsel what books, papers, and examination they desired the board of election commissioners to produce or furnish them with. Thereupon contestant and counsel made an oral statement of the things they desired. The chairman of the board, in the presence of the board, notified contestant and counsel that it was usual in State contest cases for the court to set out in writing such order for records, examination, papers, etc., as it required, and requested the said contestant and his counsel to reduce to writing the things they desired. Whereupon contestant and counsel, with the assistance of the board, drew up a stipulation of all the things they desired in the examination, contestee making no objections to any of the details of said stipulation. Said stipulation was reduced to writing, examined by contestant and his attorney, and agreed to by them, and then signed jointly by contestant, contestee, and their attorneys.

The board then ordered a blank form for use by the board's deputies in making the examination and recount, which was submitted to contestant and his attorney and approved by them, contestee making no objections.

The question of watchers was brought to the attention of the board. Contestant asked permission to have five watchers to be selected by him. Contestee made no objection, and it was agreed that contestant should have five watchers.

On the following morning, before the count had proceeded, contestant requested the board to allow him additional watchers, asking that one be allowed for each table at which a recount was being made. Contestee made no objection, and it was agreed that each side should be entitled to a watcher at each table at which the count was made, and that contestant, contestee, and their attorneys were to be permitted to be present throughout the count and examination.

4. For the purpose of making the recount and examination, the board appointed two Republican election deputies and two Democratic election deputies selected by the board for each table, where they were directed to make recount under the instructions which were first submitted to contestant and agreed to by him, contestee making no objections.

The contestant was permitted to inspect the vault containing the ballots, which were under the guard of a Republican and a Democratic election deputy commissioner, and two guards were placed upon the door to refuse admittance to any outsiders excepting election commissioners and those above enumerated; such guard consisted of one Democratic and one Republican election deputy.

5. That contestant asking that the count and examination proceed with speed, requested the board of election commissioners to hold night sessions. To this request the contestee made no objection, and it was agreed that the count should begin at 9 o'clock in the morning, continue until 12 o'clock noon, allowing one hour for lunch, then continuing during the afternoon until 5 o'clock, allowing one hour for dinner between 5 and 6, and concluding at 9 o'clock each night, contestee making no objections.

6. Contestee requests that this record shall contain the total number of registered voters and the vote cast for Congressmen in the eleventh congressional district in the year 1916, and the total registration and the vote cast for Con-

gressman in the eleventh congressional district in the year 1920, the registration and vote for the year 1918 being omitted, because the Democratic candidate for Congress, Hon. W. L. Igoe, was unopposed in that election.

7. Contestee further requests that the records show the number of voting precincts in the year 1916 and the number of voting precincts in the year 1920.

8. Contestee requests a statement from the board that national constitutional amendment No. 19 was not adopted until the —— day of ———, and the legislature not being called, it could not make adequate provision for this increase of ——— registered voters, and that all it could do was to increase the number of voting precincts from 132 to 155, in this way affording relief for ——— voters in these 23 precincts, or any average of ——— voters to a precinct.

9. Contestee requests that the board of election commissioners shall insert in their report a statement that the election was unusually quiet and orderly, but that throughout the city of St. Louis, because of the enormous increase in registration, there were delays in receiving returns, due to the unusual work performed; that they placed in charge of the contest 58 deputy election commissioners, divided equally between Democrats and Republicans; that the wage scale paid these clerks is $6 a day, and for the extra night work asked for by contestant is $3 a night; that the total cost of the contest borne by the State was $———; that the board of election commissioners has two chief clerks, one a Democrat and one a Republican; that Mr. Claudius, the Republican, has been in the employ of the board of election commissioners for ——— years; that Mr. Stansbury, chief clerk for the Democrats, has been in the board of commissioners' office for ——— years; that the official stenographer of the board is Miss Emma Bobb, a Republican, who compiles the records and keeps the minutes of the board.

10. That contestee requests that the board will furnish the contestant and contestee with certified copies of the records showing the result of the recount and examination, based upon the stipulation entered into, so that contestee may be permitted to forward such certified copy to the congressional committee of the Sixty-seventh Congress.

11. That the recount was conducted by 11 (subsequently increased to 12) crews, and that each crew consisted of two Republicans and two Democratic deputy election commissioners, a larger number than ever used at an election contest prior to this.

Mr. Bogy objected to the request of Mr. Hawes, and, addressing himself to the board, stated that he wanted a record of all the scratched ballots, and that whenever he, his counsel, or any of his watchers attempted to keep a record it was stopped by the board, and that subsequently an announcement was made by one of the commissioners that no record was to be kept of the scratched ballots. He further stated that the board agreed, orally, that he would be permitted to take photographs of certain ballots, and unless he were permitted to keep a record of the scratched ballots how was he to know what ballots he wanted photographed. This brought on a lengthy discussion as to what was agreed at the first meeting. Chairman Arnold read the minutes of the board as to the action taken at that meeting, and stated that this recount had been conducted under the stipulation drawn by the parties in contest and their respective counsel, and duly signed by them. The chairman then asked Mr. Grodzki, the notary in this contest, he having been present at all meetings of the board, if it was not his recollection that there was no record kept of any ballots the legality of which were not challenged and brought to the attention of the board. Mr. Grodzki answered that it was his recollection that it had been agreed that no record was to be kept of the scratched ballots, but that he also recollected that Mr. Bogy's request that he be permitted to take photographs of certain ballots had been granted by the board. Mr. Hawes stated this had all been taken up at the first meeting, when Mr. Bogy was asked to state in writing what he wanted, and that thereupon the stipulations were drawn up and signed.

The attorney for Bogy, Mr. Feigenbaum, during the board's examination of disputed ballots requested photographs taken of ballots Nos. 306 and 168 in ward 22, precinct 21, and of ballots Nos. 475–484, 372 in ward 4, precinct 11. The record in these precincts accordingly marked.

Mr. Buder moved that the statement of Mr. Hawes containing his various requests of facts to be certified in the return of the board be filed and considered when making up the record in this contest case. Motion seconded by Mr. Lammert, all members voting "aye,"; motion carried.

Mr. Feigenbaum objected to this request, and stated that no record be made by this board except from its official minutes, and that Mr. Hawes's suggestions were not the official minutes.

Mr. Buder being absent from the city on January 18, it was agreed by counsel for contestant and contestee that the taking of depositions be continued to Wednesday, January 19, 1921.

The recount was completed this day at 9 p. m.

Owing to the completion of all work in connection with this contest, the services of the following-named assistants were discontinued:

Democrats: George J. Kelleher, Frank J. O'Keefe, Jack Carroll, Edw. R. Hicks, Walter Grasear, Charles Eddy, Leo Mier, Leo Corbett, E. J. Linchey, William Herring, John H. Smythe, J. J. Walsh, J. Masterson, Louis A. Green, James A. Quigley, William Flannery, Thomas Leahy, John Slevin, George B. Cassidy, Frank Benish, H. A. Landry, James Harlow.

Republicans: J. C. W. Meyer, Thos. Powers, William Drach, Hy. Sperflage, Emil H. Haase, W. J. Murray, Thomas Brown, Julius Silverstein, William F. Bolte, C. H. Demuth, Alf. H. Eismann, Louis Uhri, Otto Ens, Thomas Nester, Arthur Harrison, John Menke, Roscoe Conklin, Sol Feigenbaum, Fred Becker, F. A. Luchtemeyer, John Decker, William Weakley, M. M. Jodd.

St. Louis, Mo., *January 19, 1921.*

A meeting of the board of election commissioners was this day held at the office of the board.

Present: Chairman Arnold, Messrs, Lammert and Buder; absent, Mr. Dempsey.

The attorneys for the contestant and contestee in the Bogy-Hawes contest appeared before the board, and it was mutually agreed that the taking of depositions be postponed to Friday, January 21, 1921.

St. Louis, Mo., *January 21, 1921.*

A meeting of the board of election commissioners was this day held at the office of the board.

All members present.

Chairman Arnold addressed himself to the contestant, the contestee, and their respective attorneys and asked them if they desired to be present or have watchers during the tabulation by the clerks in this office of the recount of the ballots. Both waived that right and stated that they had no desire to be present or have watchers. Thereupon the chairman instructed Mr. Stansbury to take the data compiled by the clerks in the recount and have copies of the data compared with each other (there being four copies of each) and see that they agree before tabulating the record of any one of them. Divide them so that one clerk reads them while three others compare, and then when that has been done one copy is to be furnished Mr. Bogy's counsel and one Mr. Hawes's counsel and the other two to be kept for the records of the office, and then proceed with the original copy and make the tabulation. The clerks assigned to this were Messrs. Hewgill and Smith, Republicans, and A. J. Butler and Rottmann, Democrats.

The question was then raised by Mr. Feigenbaum, attorney for Bogy, as to photographs to be taken, he having a memoranda of five ballots, but asking for several more. It was agreed that he prepare a list of the ballots he desires photographs taken of, submit it to the attorneys for the contestee, and, if no agreement is reached, then the matter is to be submitted to the election board. If an agreement is reached, photographs to be taken in this office.

The taking of the depositions of the board members was then discussed. Chairman Arnold suggested that this be postponed until the 24th, to permit the tabulation to be completed. After a discussion of the matter between attorneys for both sides, Chairman Arnold was sworn and his depostiion taken and matter then postponed until January 22, 1921.

St. Louis, Mo., *January 22, 1921.*

A meeting of the board of election commissioners was this day held at the office of the board.

Present: Chairman Arnold, Messrs. Dempsey, and Buder; absent, Mr. Lammert.

Depositions in the Bogy-Hawes contest were continued to January 25, 1921, at 9 a. m.

St. Louis, Mo., *January 25, 1921.*

A meeting of the board of election commissioners was this day held at the office of the board.

All members present.

The deposition of Chairman Arnold was being taken in connection with the Bogy-Hawes contest, and during the progress of same the question of 30 ballots which were not in the box when same was opened in this office during the recount was taken up and a discussion was had on the matter. Chairman Arnold said, "I am willing to vote, and I move that the board certify the vote as recounted by the counters in this office and the vote as returned by the judges and clerks of the election, and that the recount, together with the returns, be certified." Stated later, "I should have stated in my motion 'that the board certify the vote on all candidates.'" Mr. Buder seconded the motion. Another discussion was then had as to what was meant by Chairman Arnold's motion. The chairman stated that he meant that those 30 votes be counted for Hawes. Messrs. Lammert and Dempsey stated that they so understood it. Mr. Buder stated "that is not my understanding; my understanding is that your motion means only that the certificate include the vote as counted by our clerks in the office and those of the judges and clerks returned on election day." Voting "aye," Messrs. Arnold, Lammert, and Dempsey; voting "no," Mr. Buder. Motion carried. The chairman then stated that on the abstract to be made in this office be included the following statement: "The board certifies that the recount in ward 18, precinct 12, shows that there were 90 ballots in the box cast for contestant and 284 ballots cast for contestee. The returns of the judges and clerks show that there were 30 ballots cast for contestee, but these ballots were not in the box when the box was opened in this office. Under the stipulation the board decides that there should be added to the contestee's vote on the recount 30 votes, which makes his total in this precinct 314."

Mr. Feigenbaum, attorney for contestant, requested the board for permission to photograph the Republican, Socialist, Socialist-Labor, Farmer Workers, and Prohibition scratched ballots in the nineteenth ward, twelfth precinct; ward 26, twenty-second precinct; ward 26, seventeenth precinct; ward 20, fourteenth precinct; and ward 22, precincts 8 and 9. On motion the request was denied by the board, because the ballots, of which photographs were desired, were not returned by the recount clerks as "disputed ballots," and because it was contrary to the stipulation. Voting "no" on the motion to grant the request was Messrs. Arnold, Lammert, and Dempsey; voting "aye," Mr. Buder. Motion lost and the request denied.

Mr. Barrett, attorney for contestee, then addressed himself to the board, requesting that in ward 4, precinct 16, there be added to the votes tabulated by the recount clerks 18 votes for Mr. Hawes, contestee, because an examination shows that there are 18 ballots which he contends were cast for contestee, as shown by the poll books and the returns made by the judges and clerks of election. The same request was made for ward 19, precinct 8, 14 votes to be added; ward 20, precinct 1, 6 votes to be added; ward 20, precinct 2, 5 votes to be added; and ward 27, precinct 21, 24 votes to be added, in which last-named precinct there are 29 ballots short, of which Mr. Hawes lost 24 in the recount. The board took this request under consideration.

January 27, 1921.

A meeting of the board of election commissioners was this day held at the office of the board.

Present: Messrs. Lammert, Dempsey, and Buder. Absent: Mr. Arnold. Mr. Lammert acting chairman.

The board took up the matter of passing upon the precincts enumerated by Mr. Barrett, but as no agreement could be reached this was postponed until a later meeting.

JANUARY 28, 1921.

A meeting of the board of election commissioners was this day held at the office of the board.

All members present.

The board took up the matter of ballots which Mr. Barrett requested be added to the votes of Mr. Hawes in the following precinct and with the following result:

Ward 4, precinct 16, board rules that the certificate should contain only the votes given in the recount, as the board is unable to determine which candidate the missing ballots were voted for.

Ward 19, precinct 8, same ruling as above.

Ward 20, precinct 1, same ruling as above.

Ward 20, precinct 2, same ruling as above.

Ward 22, precinct 7, same ruling as above.

Ward 27, precinct 21, same ruling as above.

The board this day filed with Frank B. Grodzki, the notary in the Bogy-Hawes contest, their final return in the recount, which was signed and sealed with the official seal of the office. The return being as follows:

Total names on poll books	72,183
Total number of ballots in box	71,982
Ballots 1 initial for Bogy	292
Ballots no initial for Bogy	14
Ballots 1 initial for Hawes	502
Ballots no initial for Hawes	10
Ballots no number	325
No vote	271
Rejected ballots	66
Disputed ballots	18
Absentee ballots	9
Total counted for Bogy	33.337–33.592
Total counted for Hawes	35.374–35,726
Total counted for Long	1.876– 1,774
Total counted for Spalti	194– 189
Total counted for Allen	491– 452
Total counted for Prohibition	169– 27

A certified copy of the minutes of the board pertaining to this contest were requested by the notary and a copy duly made, certified to by the board, and delivered to the notary. Also, a complete copy of the precinct recounts compiled by the counters, together with the "ring sheets," was delivered to the notary.

Upon motion of Mr. Lammert, seconded by Mr. Buder—voting "aye," Messrs. Arnold, Lammert, and Buder; not voting, Mr. Dempsey—Mr. Dempsey was granted the permission to make a statement, which follows herewith:

STATE OF MISSOURI,
City of St. Louis, ss:

On this 1st day of February, 1921, before me, a notary public within and for the city of St. Louis and State of Missouri, personally appeared Vincent Dempsey, to me personally known, who, being duly sworn, on his oath deposes as follows:

That he is a lawyer practicing at the St. Louis bar for 13 years, and one of the Republican members of the board of election commissioners for the city of St. Louis, Mo., for four years; that the board of election commissioners has charge of all primary elections and all elections, general and special, National, State, and municipal, school and bond elections, and every other election of every kind and character in the city of St. Louis, Mo.; that they also have charge of ascertaining the sufficiency of petitions involving the initiative, referendum, and recall, as imposed by the State laws and city charter; that they also conduct the recount of election contests for city and State offices.

That on January —, 1921, in response to a subpœna issued by Notary Grodzki and stipulations entered into by and between Bernard P. Bogy and Harry B. Hawes and their respective counsel, said board of election commissioners conducted the recount of the ballots cast at the general election November 2, 1920, for the office of Representative in Congress for the eleventh congressional district of Missouri; that during the conduct of election contests it has always been the rule of the board that at least one member of the board would be present all of the time to see that the orders of the board were complied with in accordance with the orders of court, or as in this case stipulations entered into between the parties.

Affiant further states that during his presence in the recount of the contest in question affiant made two statements to the recount clerks, directing attention to the violations of the instructions issued by the board and approved by the parties.

The first statement made by affiant was approximately at 8 p. m. on January 14, 1921, which in substance is as follows: That no watcher be permitted to take part in the recount of the ballots. That any watcher insisting in taking part in the recount of the ballots, affiant would request counsel for the parties to exclude said watcher from the room. The reason for this statement was that a watcher appointed by Mr. Bogy, whose name is unknown to affiant, was handling and actually calling the numbers of the ballots to the ring clerk, which was contrary to the instructions of the board. This was at a table where considerable confusion was created, causing a mistake in the count and necessarily a recount of the recount of all the ballots in that precinct. Add to this the fact that the watcher when admonished seemed to resent his being prevented from taking actual part in the recount.

Second. On Saturday, January 15, 1921, at approximately 4 p. m., the following statement was made, in substance, as follows: That no watcher be permitted to take any number from any ballot unless the ballot was disputed by him or some of the recount clerks for some reason. The reason for this statement was that one Hartmann, a watcher appointed by Mr. Bogy, was taking a large amounts of numbers from ballots over the objection of the recount clerks at the table and contrary to the stipulations and instructions of the board, and the numbers of said ballots not being in dispute, and said Hartmann refused to give a reason to any of the recount clerks or affiant why he was taking the numbers. Inasmuch as contestant had called for a certified copy of the poll book containing the names of the voters and the number of their ballots, he would have information as to how the voters voted on ballots that were not in dispute.

Those were the only two statements affiant made during the recount of the ballots, and at neither time or any other time did he state that any watcher should be prevented from examining any ballot or taking a memorandum or number from any ballot that was disputed by him, the parties, their counsel, or the recount clerks.

Affiant further states that the ballot boxes from the elections are kept in a vault in the custody of the board of election commissioners in pasteboard boxes, and said vault is opened only by the means of two keys, both of which are necessary to open the door of the vault. That one key is in the possession of the Democratic chief clerk and the other key is in the possession of the Republican chief clerk; that these two clerks were instructed by the board to remain in the office from the time the recount began in the morning of each day of the contest until the office closed at 9 o'clock p. m. each day of the contest; that the recount was conducted from 9 a. m. to 9 p. m. each day of the contest, with the exception of from 12 m. to 1 p. m. and 5 p. m. to 6 p. m. for meals; that during the meal hours the two chief clerks already mentioned had to remain in the office, all other parties being excluded so that these two clerks had to remain in the election commissioners' office from 9 a. m. to 9 p. m.; that this proceeding has always been followed in election contests that necessitates the opening of the vaults; that it is usual and necessary and was done in this contest, that the noon and evening meal be furnished to the chief clerks aforesaid by the board in the office; that no meals were brought or served at the expense of the board or otherwise for any other person or persons, commissioners, or parties, with the exception of these two clerks.

Affiant further states that at the table at the extreme south end of the room the clerks and the watchers were involved in constant argument; that the recount was delayed to such an extent that it practically took them one entire day to count one precinct, when other tables were averaging three precincts; that at this table sat one Mrs. Caultfield, watcher for Mr. Bogy; that affiant's attention was being continually called to this table, as well as the attention of other members of the board; that at the request of my Republican colleague, Mr. Buder, the clerks of this table were called before the board to inquire as to the cause of the delay and admonished by Mr. Buder that the sole object of the clerks was to carry out the instructions of the board and to secure a perfect and fair count, partial to neither side, and that they were not to act because they were Republicans or Democrats, as counsel or participant for either side in the contest.

After that admonition affiant was repeatedly called to that table, and eventually affiant came to the conclusion that either these clerks were partial or were endeavoring to delay the recount, and he made the following statement: "This table is giving us more damn trouble than all the tables in the room put together." Affiant further states that he appointed personally one of the Republican clerks at this table and that he did so over the objection of some of the permanent Republican clerks of the office and over the objection of the Republican chief clerk of this office; that after appointing said clerk the Republican chief clerk told said clerk that there was no work for him and Mr. Bogy appointed him a watcher, and that affiant hearing of this told Mr. Bogy that he would appoint him as a clerk, which Mr. Bogy preferred. And, by the way, this clerk received his appointment through the request of his brother, who is attorney and chief counsel for Mr. Bogy in this contest proceeding.

Affiant further states that he is now and always has been a Republican; that he always voted in the Republican primary of every character whatever and voted the Republican ticket at every election since he became of age, including the general election of November the 2d, 1920, and at that election he voted the straight Republican ticket.

Affiant further states that he was present practically during the entire time of the contest; that he did not himself make any effort and saw nobody make any effort to interfere with the contestant or contestee, their representatives, counsel, watcher, or clerks from taking the numbers of any ballots that they desired to dispute for any cause.

Affiant further states that the eleventh congressional district of Missouri is composed of the following wards or parts of wards in the city of St. Louis, Mo., containing the second, third, fourth, eighteenth, nineteenth, twentieth, twenty-second, twenty-sixth, and twenty-seventh wards; that the recount of the ballots was conducted in the order named; that on Saturday, January the 15th, 1921, at 4 p. m., all of the second, third, fourth, eighteenth, nineteenth, twentieth, and twenty-second wards were finished and some of the twenty-sixth were finished, so that nothing remained to be counted except part of the twenty-sixth and that portion of the twenty-seventh ward lying in the eleventh district; that Mr. Bogy at that time, and that was the first time, asked that a memorandum be kept of all the scratched Republican ballots, although the district was practically recounted, and, as affiant distinctly remembers, in the conversations between the parties and the board of election commissioners preceding the signing of the stipulation state himself and his counsel, Cornelius F. Bauer, that they did not want the data to show the number of straight ballots and the number of scratched ballots but wanted the total; that Mr. Bogy at said time, to wit, 4 o'clock p. m., Saturday, January the 15th, 1921, asked for the memorandum of the scratched ballots and he was advised by affiant that he could have the same by indicating the particular scratched ballots he wanted.

Affiant wishes this sworn statement to appear in the minutes of the board of election commissioners because of the testimony of Mr. Bogy's watchers and Mr. Bogy and in consequence of the persistent refusal of Mr. Bogy and his counsel to permit affiant to take the stand and be sworn as a witness, although contestant had subpœnaed affiant as a witness in his behalf and was actually sworn before a notary public in this case, thus placing affiant in the false attitude of being partial in taking sides, which he did not do and had no intention of doing.

Affiant further states that his sworn statement be incorporated as a part of the minutes of the board for the further reason that he was informed by the contestee tha the would take no testimony whatever in this case, but would rely on the testimony and recount submitted by the contestant. Therefore, said refusal on the part of the contestee would shut this affiant from any opportunity of being allowed to make a statement under oath at any part of the proceedings, and he asks the board of election commissioners, in fairness to himself, so that the body reviewing the acts and proceedings of the election commissioners may be able to determine whether or not this affiant acted fairly and impartially during the recount and solely in carrying out the instructions of the board of election commissioners of the city of St. Louis, Mo.

VINCENT DEMPSEY, *Affiant.*

Subscribed and sworn to before me this 2d day of February, 1921.

[SEAL.]

FRANK B. GRODZKI,
Notary Public.

My commission expires the 9th day of September, 1921.

EXHIBIT E.

(Sheets showing result of recount of ballots in contest and abstract of votes, together with certificate of board of election commissioners, on file. Omitted in printing.)

EXHIBIT F.

(Data sheets and ring sheets made up by deputy election commissioners during recount of ballots. Omitted in printing.)

Mr. HAWES. I want this record to show that Commissioner Dempsey is in the room, and that during two days taken up in an attempt by various men who were not experienced in the English language—laborers, butchers, and others—to describe two instructions given to the clerks by Commissioner Dempsey and the record show that Commissioner Dempsey addressed a communication to both contestant and contestee, requesting that he might state what these two instrucions were, and I now ask that Commissioner Dempsey be given an opportunity, which is only fair, as an officer of the board—he was acting in behalf of the board during the absence of the board, which was the custom—I request that Commissioner Dempsey be heard under oath.

Mr. FEIGENBAUM. Contestant for reasons, which I will be personally willing to explain in his own deposition, at the proper time, and which it is expected will be taken to-morrow, declines during his time to call Commissoner Dempsey as a witness. However, should he not be called before the close of the deposition taken on behalf of contestant, ample opportunity will be afforded contestee to take the deposition of said commissioner.

Mr. HAWES. Contestee desires to state that in all probability—depending solely upon an examination of the evidence—that he may not take any depositions, and that this may be the last opportunity afforded Commissioner Dempsey to state first hand and officially what his instructions were. I ask the chairman of the board, who is under oath, subject to examination, if, in his opinion, he does not think it is only just and fair that Commissioner Dempsey should be heard.

Mr. FEIGENBAUM. Just a moment. We want to object to that queston. It is within the rights of any party to a contest, or any other legal proceeding, to produce his evidence in the manner he sees fit, and we again urge that contestee, if he is so anxious to give Commissioner Dempsey an opportunity to fully state his own instructions directed to the clerks, judges, and watchers, that he can do so on his own time, and that no objection will be urged to his doing so.

Mr. HAWES. Now, Commissioner Arnold, the request for Commissioner Dempsey to be put on the stand having been refused, I want to ask you if, in the absence of the board, one member being present, which is the custom of the board, Commissioner Dempsey found that watchers were handling ballots—counting ballots and performing the functions of clerks, if a general instruction of his to the effect that such watchers must stop handling ballots was an improper instruction?

A. No.

Q. What do you mean by no?—A. It was not an improper instruction.

Q. Well, then, was it a proper instruction?—A. It was. We originally—at the outset of the contest, we instructed the watchers—the clerks and the watchers that the watchers were not to handle the ballots.

Q. I will ask you, Judge Arnold, if Commissioner Dempsey, or any other commissioner in the absence of the board, found the watchers of either contestant or contestee taking the numbers of ballots, other than those that were in dispute, whether if he reproached such watcher, he performed a proper function for the board?—A. Yes, sir. The commissioner is present in charge of the office, and it is their duty to see that the rules of the contest are properly carried out.

Q. Was that a proper instruction?—A. That was.

Q. Then if he followed up that statement with an instruction to all the watchers that they were not to keep the numbers of ballots excepting those that were in dispute, was that a proper instruction?—A. That was; yes, sir.

Mr. HAWES. That is all.

Mr. FEIGENBAUM. Replying and answering the questions as to what were and weren't instructions under the rules and stipulation that has been introduced in evidence, I understand you to give your own view of what was proper under that stipulation and not the views of any other members of the board.

A. I am speaking for the board.

Q. For the board?—A. Yes.

Q. Do you mean that that had already been discussed at the meeting of the board?—A. That was the understanding among the members of the board here; they were to take no data except what the clerks were making.

Q. That was your personal understanding?—A. The minutes of the board ought to show that.

Q. And if any other member of the board thought a man had a right to take that data, you wouldn't undertake to say that the opinion you have just given was the opinion of any such other member?—A. No; I wouldn't, of course.

Q. That is your view of what the instruction called for?—A. That is a statement of fact.

Mr. HAWES. Judge, there is in this room at the present time, Commissioner Lammert. Will you please ask Commissioner Lammert if he believes those two instructions were properly given by Commissioner Dempsey?

Mr. FEIGENBAUM. We object to that, because judge's answer to that, if he asked another commissioner, would be pure hearsay.

Mr. HAWES. Will you confer with the commissioners that are present——

A. I can state now in the record that we had a definite understanding among the board, and I am confident the minutes will show that no data was to be taken from these ballots or the poll books except that which was—which the clerks were instructed to take and make on their memoranda as they counted the ballots, and if any of the watchers undertook to take other information from the ballots than that which the clerks were instructed to gather, then they violated the rules of the board.

Q. And this instruction was agreed to by Mr. Bogy and Mr. Bogy's counsel?—A. They were present; yes.

Q. It was agreed to by them specifically?—A. That is my recollection of it. Those instructions were given in Mr. Bogy's presence before the board. He was present when I made the announcement when we started the contest.

Q. So that, speaking for the board, if Commissioner Dempsey stopped a watcher from taking numbers of ballots which were not in dispute he performed a proper function as the agent of this board, in your opinion?—A. He did; and I did the same thing. I issued these instructions twice. It was complained to me that one of the watchers at one of the tables was taking the numbers of all of the scratched ballots, including those that were not in dispute, and I instructed him in the presence of—as I recall it—of the whole board, that he was not to take any more—take the numbers of any more ballots.

Q. That was Hartmann?—A. That was Hartmann. We called him in here and had a lengthy discussion over that question.

Q. And it was the result of bringing Hartmann into this room in which you were present, I think, Mr. Lammert, and Mr. Dempsey, and that then——

A. Mr. Dempsey then left the room and gave the instruction to the watchers that I have described.

Mr. FEIGENBAUM. I object to that unless the judge heard that.

A. I don't know; I didn't hear Mr. Dempsey give any instructions that I recall at the present time.

Mr. HAWES. Now, the request for Commissioner Dempsey having been refused an opportunity to testify and Mrs. Caulfield having stated that Commissioner Dempsey is not a Republican, I desire to ask you whether, as a matter of fact, you don't know that Mr. Dempsey's Republicanism has never been questioned; that he was indorsed for his present position by the Republican City Central Committee of this city, and that he is indorsed for reappointment by the present committee of this city?

Mr. FEIGENBAUM. Just a moment. I object to that question, because Mrs. Caulfield did not say that Mr. Dempsey was not a Republican.

Mr. HAWES. She did on direct examination.

Mr. FEIGENBAUM. I understood her to say that she did not know Mr. Dempsey was a Republican, but thought he was Democrat until later, when she learned he was a Republican. That was her statement.

Mr. HAWES. I ask for an answer to the question.

The WITNESS. Yes; Mr. Dempsey is a Republican. I never heard his Republicanism questioned by any of his friends and associates.

Mr. HAWES. Do you happen to know whether he was indorsed by the committee?

The WITNESS. I saw the indorsement. I think it was by practically all of the Republican city committee—indorsement for reappointment to his present position.

Q. Have you ever heard anybody question the fact that he voted as always—all his life voted the Republican ticket at the primaries and general election—have you ever heard it questioned?—A. I have never heard it questioned. On the contrary, I have heard him state he always voted the Republican ticket.

Mr. HAWES. That is all.

Mr. FEIGENBAUM. That is all.

NOTARY PUBLIC. Mr. Feigenbaum, have you quit with the taking of depositions now in the room of the election commissioners?

Mr. FEIGENBAUM. Yes, sir.

NOTARY PUBLIC. When do you suggest that the next deposition of witnesses shall be taken—what hour and what place?

Mr. FEIGENBAUM. To-morrow morning at 11 o'clock at my office, 316 Chemical Building.

NOTARY PUBLIC. Mr. Barrett, as counsel for the contestee——

Mr. HAWES. I desire to object to this postponement. We entered into an agreement to take depositions until 11 o'clock to-night. I have made my arrangements, and so has Mr. Barrett, to spend the evening taking depositions, and contestant has complained of loss of time. We agreed with him to take depositions until 11 o'clock to-night, and I object to any postponement.

Mr. FEIGENBAUM. I want to say in behalf of contestant that we are not seeking to postpone the depositions, that we had six additional witnesses subpœnaed for to-day, that they appeared at the office, 316 Chemical Building, that I saw four of them personally myself and that during the long cross-examination of one of the witnesses this morning, while we remonstrated with counsel for contestee that witnesses were waiting outside of the door, these witnesses had left and did not return, and we are unable to take any further depositions until to-morrow morning at 11 o'clock, because these witnesses are gone for the day.

Mr. HAWES. I suggest that if counsel for contestant can take depositions this evening, that we proceed to take depositions at 9 o'clock to-morrow morning instead of 11 o'clock.

Mr. FEIGENBAUM. I have a personal engagement between 10 and 11, is my only objection for them to be taken at 11. Not contestant, but contestant's counsel has another business engagement between 10 and 11. Mr. Bauer is not in good health, as contestee knows. He was down this morning for a few hours for the first time during the taking of these depositions.

Mr. HAWES. Counsel Feigenbaum has a brother and associate in this case who can take depositions at 9 o'clock in the morning, and I suggest his brother commence the taking of depositions at that hour. He is of counsel in this case. How many witnesses have you got?

Mr. FEIGENBAUM. If we can get the other witnesses that were in to-day, we have nine other witnesses to take. If we can't get those to come, we only have three witnesses all told.

Mr. HAWES. Is that all the witnesses you have?

Mr. FEIGENBAUM. That is all.

Mr. HAWES. If we can complete the taking of the depositions by extending into to-morrow night, you will finish your case with these nine witnesses?

Mr. FEIGENBAUM. Absolutely.

Not being able to complete the taking of said depositions, I adjourn the further taking of the same until to-morrow, then to be continued at room 316, Chemical Building, between the same hours mentioned in the annexed notice.

FRANK B. GRODZKI, *Notary Public.*

At 11 o'clock a. m., Saturday, January 29, 1921, the further taking of these depositions was resumed, pursuant to the adjournment above noted, at room 316 Chemical Building, St. Louis, Mo., and the following proceedings were had, to wit:

Appearances: J. M. Feigenbaum and Leon Feigenbaum for the contestant; Campbell Cummings and Peter T. Barrett for the contestee.

ALFRED H. EISEMAN, a witness of lawful age, being produced, sworn, and examined on the part of the contestant, deposeth and saith:

Mr. CUMMINGS. You might put in the hour, half past 11, and that contestee has been ready since 11 o'clock.

The NOTARY. We are starting in at 11.30.

Mr. LEON FEIGENBAUM. Can I interrupt the proceedings long enough to make a statement for the record? I want it noted that I withdraw as counsel for the contestant.

Direct examination by Mr. FEIGENBAUM:

Q. Please state your name.—A. Alfred H. Eiseman.

Q. Where do you reside, Mr. Eiseman?—A. 4257 West Easton Avenue.

Q. Is that a double street?—A. Double block.

Q. What is your occupation, Mr. Eiseman?—A. Electrician.

Q. Where are you employed?—A. For myself.

Q. In business for yourself?—A. Yes, sir.

Q. What is the style of your firm?—A. Atlas Electric & Talking Machine Co.

Q. Where is it located, Mr. Eiseman?—A. 4257 Easton Avenue.

Q. Mr. Eiseman, what is your politics?—A. Republican.

Q. Have you consistently been a Republican?—A. I have.

Q. Were you ever engaged as an election official at any general election?—A. I have.

Q. In what capacity, Mr. Eiseman?—A. Judge.

Q. And in what wards and precincts, if you can recall?—A. Twenty-second ward, I think it was the seventeenth precinct.

Q. And during what election, or, rather, over what period of time did that extend?—A. That has been about seven years ago.

Q. About seven years ago. Did you act as judge for any length of time?—A. About six years.

Q. Now, Mr. Eiseman, for how long a period of time were you acting as judge of elections?—A. For about six years.

Q. For about six years continuously?—A. Yes.

Q. And can you tell us at what general elections you served as judge of election?—A. It was the first time of Wilson.

Q. You mean——A. At the general election, the first term of Wilson.

Q. The general election when President Wilson was elected for the first time?—A. Yes.

Q. I think that was in 1912; am I right?—A. Somewhere in there.

Q. And you acted as judge at that election?—A. Yes.

Q. Now, Mr. Eiseman, recently were you employed in the office of the election commissioners of the city of St. Louis during the recount in the Bogy-Hawes contest?—A. I was.

Q. In what capacity?—A. Clerk.

Q. Can you tell us at what table you were stationed?—A. Well, I think they called it the seventh, if I am not mistaken.

Q. Mr. Eiseman, when did you start working at the election office during the contest? Was that the 12th of this month?—A. Yes. I don't know exactly; I think it was Wednesday.

Q. It was on Wednesday?—A. Yes.

Q. Now, if Wednesday was the 12th, when the recount started, would that be the day?—A. That would be the day; yes.

Q. And did you continue as clerk throughout the recount?—A. I did.

Q. What instructions, if any, do you recall having been given you by Judge Glendy B. Arnold, the chairman of the election board, just before the recount was begun?

Mr. BARRETT. I object to the question because the record already shows the instructions were in writing——

A. They were all in writing.

Mr. BARRETT. And it would be an attempt to contradict the terms of those written instructions by oral testimony.

Mr. Feigenbaum. Were the instructions sent around to you in a written form, or did some one, Judge Arnold or some one else, come up and announce any?

A. Well, when we started they were all given out in regular form.

Q. They were sent around in regular form?—A. Yes.

Q. Now, those instructions that you say were passed around, were they 10 in number, headed "Instructions to counters," something of this character [indicating]?—A. Yes.

Q. Now, after this was passed around were any further instructions issued by Judge Arnold to you?—A. Not that I remember.

Q. That same day?—A. No.

Q. Did anyone else issue any such instructions the same day? I am referring now to the first day of the recount.—A. No; not that I remember of.

Q. Can you recall any further instructions or statements made by the election commissioners directing the judges, clerks, and watchers at the recount tables to either do certain things or refrain from doing things during the recount?—A. Mr. Dempsey gave us an instruction, but I don't know whether it was the second or third day.

Q. Second or third day of the recount, which would be either Thursday or Friday?—A. Yes.

Q. If the recount started on Wednesday?—A. Yes. That we were to take no notations of any scratched ballots. That is about the only thing we got after that.

Q. Did he make that as a public announcement; that is, in a loud, audible tone of voice?—A. Yes.

Q. To all the judges, clerks, and watchers?—A. To all the judges, clerks, and watchers.

Q. What was that, as near as you can remember?—A. That is about all it amounted to; I don't remember the exact words.

Q. That you were not to take any notations of scratched ballots?—A. That is it.

Q. Previous to that did you understand that you had a right to take numbers or notations of scratched ballots?—A. No.

Q. Well, did you have any understanding on that?—A. No; we had not.

Q. Then, up to that time you had no understanding, and your attention was not directed to that question at all, as to whether numbers and notations of scratched ballots were to be taken?—A. No.

Q. Except what appears in this written form of instructions, which says simply to separate the scratched ballots from the straight?—A. Yes.

Q. At your table were any separate figures or numbers kept, or, rather, figures kept of the number of scratched ballots and the number of straight ballots?—A. No.

Q. Now, while you were recounting these various precincts did you see any number of scratched ballots, either Republican, Socialist, or Farmer-Labor in any one precinct where the name Harry B. Hawes was written in in an identical or very similar handwriting?—A. I saw that in one precinct only.

Q. In one precinct?—A. Yes.

Q. Can you recall the precinct now?—A. That was the twenty-second precinct of the twenty-sixth ward.

Q. Twenty-second precinct of the twenty-sixth ward. And about how many ballots did you notice the name Hawes written in in the same or similar handwriting?—A. I think there was about 12 or 13; I am not sure.

Q. Now, can you tell us whether they were Republican ballots?—A. No; they were Socialist and Farmer-Labor.

Q. Was any notation made of that?—A. No, sir.

Q. None whatever?—A. No.

Q. Under your instructions were you to make any such notations?—A. No.

Q. Was anything said at any time during the recount by either of the election commissioners as to keeping any track of scratched ballots where there was a similarity in handwriting?—A. No.

Q. Did you hear Mr. Bogy say anything about that after the announcement that you have referred to that was made by Mr. Dempsey?—A. Yes. I think he demanded something like that at the same time this instructoin came out by Mr. Dempsey.

Q. Can you tell us about, in substance, what his demand was, Mr. Bogy's?—A. No; I just can't repeat it; no.

Q. But in substance, what was it? What did he want them to do?—A. That he demanded a record kept of all scratched ballots, or something to that effect.

Q. Did he say anything about similarity of handwriting that you remember?—A. No; I do not recall that he did.

Q. Did you hear him say anything about photographic ballots?—A. There was something said about that, but I did not get it. We were at the other end of the room.

Q. Now, did you notice any ballots that came to your table where a dissimilarity appeared in the handwriting, in the writing in of the name "Harry B. Hawes" and the names of other candidates for other offices?

Mr. Barrett. I object to the question. There is only one office in contest here, and that is the office of Congressman.

A. Well, I did not see it, anyway.

Mr. Feigenbaum. How?

A. I say I did not notice it, anyway.

Q. These ballot boxes, where the ballots were taken out and counted at the various tables, including your own table, how did they come to your table?—A. In a box.

Q. Were the boxes sealed?—A. All but one; it was torn open.

Q. Well, they were not opened, of course, generally, I am speaking of—they were not opened before they reached your desk?—A. No.

Q. They were to be opened at your table?—A. They were supposed to be; yes, sir.

Q. And to be opened at the table in the presence of the four officials?—A. In the presence of the four officials.

Q. Now, you said that one box came to your table with the seal broken. Will you describe the character of that box—that is, was the seal broken or was it simply loosened?—A. No; it was torn.

Q. Now, was it torn at the place where the lower end of the lid joined the box?—A. Yes.

Q. So that the lid could be lifted off?—A. Yes.

Q. Mr. Eiseman, do you recall any of the ballot boxes coming to your table with any large number of ballots missing?

Mr. Barrett. That is too general. I object to that question.

Maj. Hawes. The record will show.

Mr. Barrett. The record will speak for itself.

The Witness. The record will show. But there wasn't none missing. There was always plenty of ballots there.

Mr. Feigenbaum. Always what?

A. Always plenty of ballots there?

Q. Always plenty of ballots?—A. Yes, sir.

Q. Sometimes too many?

Mr. Barrett. I object to that question as leading and suggestive.

Mr. Feigenbaum. He said there was plenty.

The Notary. No; he has answered just in one case.

Mr. Feigenbaum. Was this cut that you saw across this box that was open—was that a clean cut or a ragged cut?

A. No; it was a ragged cut. That could have been done, you know, from one box pressing the other, because it was sealed tight.

Q. You mean it could have been forced open?—A. Yes; by another box laying up against it, could have been pressed in from the side. That would cause it to tear.

Q. Did you notice any marks on either side of the box to indicate that it had been scratched or rubbed against?—A. No.

Q. Was any explanation made to you or any of you by any of the judges at the table as to how this box became open?—A. No; outside of that the judge announced that this box had been opened.

Q. Now, was there any instance where any number of ballots were missing from a box and later found?

Mr. Barrett. Now, wait a minute.

A. No.

Mr. Barrett. I object to that question. The witness says there were none missing from his table.

Mr. Feigenbaum. It wasn't at your table that there was one box in which 35——

Mr. Barrett. I object to that.

Mr. FEIGENBAUM. I want to refresh his memory.

Mr. BARRETT. I object to counsel leading the witness and suggesting the answers and concluding there was any such condition.

Mr. FEIGENBAUM. I will ask you again, then, Mr. Eiseman, do you recall any instance where any number of ballots were missing and then later found, if there was any at your table?

A. No; there was never any missing.

Q. None that you can recall—I mean that were not counted?—A. Well, there was one precinct where there was a number of ballots uninitialed or numbered, and there was a lot of open rings on the ring sheet.

Q. Now, do you recall anything unusual in any ballot box of the fourth ward that appeared on your table?

Mr. BARRETT. I object to that question as too general, and I object to it because it is leading and suggestive.

Mr. FEIGENBAUM. Mr. Eiseman, can you tell me how many precincts were counted by your table in the fourth ward?

A. Two of them, I think.

Q. Now. I will ask you if there was anything unusual in either one of those two that attracted your attention?

Mr. BARRETT. Which ones are you speaking about?

Mr. FEIGENBAUM. Either one of the two precincts of the fourth ward. He only counted two.

Mr. BARRETT. Do you remember what ones they were?

A. No; I don't remember which ones they were. There was something unusual, but that was covered in the report.

Q. Tell us in your own words what occurred there?

Maj. HAWES. I object to that. The report which is sent to Congress describes the condition, and the question is unnecessary.

Mr. FEIGENBAUM. Who were the other judges and clerks at your table, if you remember?

A. Ens and Linchey.

Q. I call your attention to precinct 12, ward 4, where the sheets show 51 numbers open on ring sheet. Is that the precinct you had in mind?—A. That is the precinct; yes.

Q. Now, were there any particular group of ballots in there that attracted your attention for any special reason?—A. Well, yes.

Q. If so, explain them to us.—A. There was a group of ballots in there that were not numbered or marked that were called on, and they were not even folded.

Q. How large a number were they, about?—A. I think there was around 30.

Q. Around 30 of them. You say they were not even folded?—A. Yes.

Q. Now, you have been an election official at general elections before, and you know the practice as to how ballots are put in boxes?—A. Yes.

Mr. BARRETT. I object to that, as to what he may have done.

Mr. FEIGENBAUM. No; the general practice.

Mr. BARRETT. He can only testify necessarily from his own experience. He can't testify as to the general practice of all the judges and clerks in the city.

Mr. FEIGENBAUM. He can testify as to the general practice with reference to putting ballots in the boxes. There is no question as to how a ballot should be inserted in the box.

Mr. BARRETT. No; he can't do it unless he can testify from his own experience, and unless he will say that he had been in other places all over town, and watched it over a considerable period, he can't qualify as an expert as to what the custom was in other places.

Mr. FEIGENBAUM. I submit the witness is competent to show the practice under the rules prescribed by the election board of St. Louis must be adhered to in placing ballots in boxes at any election. Now, repeat the question to him, please.

(Last question read as follows: "Now, you have been an election official at general elections before, and you know the practice as to how ballots are put in boxes?")—A. Yes.

Q. Are these ballots folded individually before placed in the box, or are they kept out until a group of them are ready and all laid in together?

Mr. BARRETT. I object to that question, because it has no probative force, because it does not tend to prove any impropriety on the part of the election officials, as at the election there is used a steel box in which the ballots are deposited when received from the voter, which, at the close of the day of election, is opened, and the ballots are all then counted, and after a record is made of them they are placed in a pasteboard box, sealed, and sent to the election commissioners' officer. And also because this question, and some more similar questions, are asked for the purpose of consuming time, which will be necessitated on cross-examination to make the matter clear.

Mr. FEIGENBAUM. Now, the purpose in introducing this testimony is not to encumber the record as we have undertaken all along to keep the record down as much as we can. We will show, however, by this witness that a large group of ballots was put in this box, and, although counsel contends they were opened again, it will be shown they never had been folded, and we think that is very material in showing a fraudulent practice in the fourth ward.

Mr. BARRETT. It is immaterial how they are. There is no fixed rule for doing that, and you can put them in in any way desired. There is no uniform practice.

Mr. FEIGENBAUM. Is it contended by counsel for contestee that ballots may be kept outside of the box during the day, and then all put in in one group during the evening? If so, we would like to hear it. Now, will you read the question to him, please?

Mr. BARRETT. I will object to this question, and I will say in response to remarks of counsel for contestant, that all ballots when counted by the judges are laid out flat on the table and all creases are obliterated, and after being so counted and a record made and the return signed by the judges and clerks these ballots are all placed in a paper box and returned to the election commissioners.

Mr. FEIGENBAUM. Read the question.

(Last question read as follows: "Are these ballots folded individually before placed in the box or are they kept out until a group of them are ready and all laid in together?")

Mr. FEIGENBAUM. Answer the question, please.

A. They are put in separately.

Q. And are they folded up many times, taking a large ballot like the one we had in the last general election, a long ballot, does that have to be folded up many times before you can put it into the box?—A. Yes, sir.

Q. Do you know how many creases will have to be made before that ballot can be inserted?—A. They are usually doubled, and there are about six creases in them.

Q. You know the practice, and how a ballot looks after it comes out; you have been a judge of election. After that ballot is folded up and placed in the box and taken out in the evening, after lying there all evening, is it easily—are all the creases easily taken out as soon as you open them up?—A. No; I don't know as you could ever take them out.

Q. Now, then, this number of ballots, that you said were about 30 in number——A. Around 30; yes, sir.

Q. Around that; what was their appearance as far as ever having been folded up?—A. They were very smooth; didn't look as though they had ever been folded.

Q. Were they all together?—A. All together, yes.

Q. Were there any intials on them?—A. No.

Q. Were they numbered?—A. No.

Q. And those were in the ballot box of this twelfth precent of the fourth ward?—A. Yes, sir.

Q. In this particular precinct referred to—twelfth precinct of the fourth ward—it appears that there were 447 ballots in the box and that the total names on the poll books were 438, or 9 less than the ballots show in the box.—A. That is right.

Q. Now, I will ask you, Mr. Eiseman, whether you noticed anything unusual on the ballots in the group of ballots that you examined at your table?—A. No; not that I can say.

Q. Now, did you see any groups of ballots that looked fraudulent to you?

Mr. BARRETT. That calls for a conclusion.

Mr. FEIGENBAUM. As an election official.

Mr. BARRETT. I object to that question as calling for a conclusion of the witness.

Mr. FEIGENBAUM. I am going to ask him how they looked.

The WITNESS. Well, we were not supposed to judge of that. We were there to count them.

Q. These ballots that you saw were in the same handwriting, the scratched ballots?

Mr. BARRETT. I object to that.

Mr. FEIGENBAUM. He said they were.

Mr. BARRETT. I object to that question, because he didn't say anything of the kind.

Mr. FEIGENBAUM. See if I have misquoted you, Mr. Eiseman. Did you testify a few minutes ago that there was about 12 ballots, all Socialist and Farmer-Labor ballots, that appeared to have been scratched and the name Hawes written in in the same or similar handwriting?

A. To the best of my knowledge they were.

Maj. HAWES. In what ward, Mr. Eiseman?

A. Twenty-sixth ward.

Maj. HAWES. I object to this question, because counsel has been discussing precincts examined in the fourth ward, and he is attempting to confuse the record with maters that took place in the twenty-sixth ward.

Mr. FEIGENBAUM. I have examined this witness both on the twenty-sixth ward and the fourth ward, they both being in the eleventh congressional district. It is not my intention to confuse the record at all, but to get at any fraudulent acts of anyone in either one of the wards, being all in the eleventh congressional district.

Q. Now, in this twenty-sixth ward, twenty-second precinct, did you say you noticed this similarity of handwriting?—A. Yes.

Q. Was that called to the attention of the election commissioners?—A. No.

Q. Why?—A. Well, we were not supposed to make a record of it.

Q. You say you were not supposed to; were you told to or told not to?—A. We were told not to make any records of anything of the kind.

Q. By whom were you told that?—A. By Mr. Dempsey.

Q. Will you tell us when you were so told?—A. Well, I ain't positive whether it was the second or third day.

Q. And what did he say, as near as you can recall?—A. Said that we were to make no notations of any of the scratch ballots or anything of the kind; that we were only there to recount.

Q. Now, you have had some experience as an election judge; you know how elections are conducted in polling places. Do you know of any way in which any fraud if committed in any one precinct or number of precincts through the improper scratching of ballots could be discovered in the manner the recount was being conducted?

Mr. BARRETT. I object to that question as calling for a conclusion and contradictory with the facts in evidence also.

Mr. FEIGENBAUM. I don't think it is contradictory at all.

Mr. BARRETT. Yes; it is. Your own witness, Miss Bobb, testified here——

Mr. FEIGENBAUM. This witness has already testified that he saw a number of ballots——

Mr. BARRETT. You are using this witness to contradict other witnesses you placed on the stand, notably Miss Bobb, Judge Arnold, Commissioner Buder, and Mr. Hurley.

Mr. FEIGENBAUM. Those witnesses testified that they gave certain instructions and that they did not see the conduct of the recount; that they were in their own rooms. I am asking an official who actually took charge, or rather was connected with one of the tables, and who saw the recount, and he is in the best position to know what was done.

Mr. BARRETT. And I also charge contestant and his counsel with unfair practice in attempting to impeach the integrity and character and honesty of Commissioner Dempsey without affording him an opportunity to testify under oath in this case; and, after being notified that contestee did not intend to take any evidence in the case, it is manifestly unfair to besmirch the character of a public official without giving him an opportunity to be heard.

Mr. FEIGENBAUM. I submit, in reply to that—because I feel a reply is necessary, since that charge has been raised many times—that it is our privilege to take the witnesses and cause them to testify in the order we see fit, without changing that order to please contestee, and particularly his counsel and to save him the trouble of putting a witness on the stand, for he has more time than we have to put not only one witness but any number on the stand if he so sees fit to do.

Mr. BARRETT. And I might add also that Commissioner Dempsey was subpenaed as a witness by contestant and was actually served.

Mr. FEIGENBAUM. Since that addition has been made, we want the record to show—and if we are in error I ask to be contradicted by counsel—that Commissioner Dempsey did appear yesterday and offered of his own volition, without request from either party, to testify as a witness. Will you read the question now, please?

Mr. Hawes. I would like the record also to show that Commissioner Dempsey made an earnest appeal to counsel for contestant for permission to be heard; that such appeal was made in the presence of the entire board of election commissioners, and was refused.

Mr. Feigenbaum. Read the question.

(Last question read as follows: "Now, you have had some experience as an election judge; you know how elections are conducted in polling places. Do you know of any way in which any fraud, if committed, in any one precinct or number of precincts through the improper scratching of ballots could be discovered in the manner the recount was being conducted?")

The Notary. Mr. Dempsey also appealed to the notary to be allowed the privilege of testifying, and the notary's answer to him was that he did not know whether under the law he could permit him to testify, unless called as a witness by the parties, but that he had no objection to him testifying.

Maj. Hawes. I want the record to show that contestee at the time stated that it was at that time not his intention to take evidence, and that if Commissioner Dempsey was not permitted to testify at that time, he would not have an opportunity for an examination under contestee.

Mr. Feigenbaum. I want the record also to show that we were notified some time ago that contestee would take depositions; in fact, two witnesses were subpœnaed whose depositions would be taken, and it was only yesterday, being the 28th, when we were for the first time advised by contestee that no depositions would be taken by him.

The Notary. Alright. Read the question now to the witness and let him answer it.

(Last question read as follows: "Now, you have had some experience as an elecion judge; you know how elections are conducted in polling places. Do you know of any way in which any fraud, if committed, in any one precinct or number of precincts through the improper scratching of ballots could be discovered in the manner the recount was being conducted?")

A. I have no way of telling.

Q. You mean you have no way of telling how such could be discovered?—A. No.

Q. In your opinion, could such things be discovered from the records that were kept?

Mr. Barrett. I object to that as calling for a conclusion of the witness; he has not qualified as an expert on election contests.

Mr. Feigenbaum. Do you know of any way in which discoveries of such matters could be made by contestant, Mr. Bogy, when such records were not being kept of scratched ballots?

A. No.

Q. Mr. Eiseman, are you a member of any Republican organization?—A. Yes.

Q. What Republican organization?—A. Twenty-second ward Republican organization.

Q. Is that the regular twenty-second ward Republican organization?—A. Yes.

Q. Is Judge Grassmuck the head of that, or active in it?—A. No; he is not.

Q. He is not very active?—A. No.

Q. But that is the regular headquarters of the twenty-second ward Republican organiaztion?—A. Yes, sir.

Q. You are a member of that?—A. Yes.

Q. Did that organization support Mr. Bogy?—A. Yes.

Q. As a candidate for Congress?—A. We did.

Q. For the eleventh congressional district, which included your ward?—A. We did.

Q. Was he popular with the organization?

Mr. Barrett. I object to that as calling for a conclusion.

Mr. Feigenbaum. I submit that is proper. Witnesses have been asked already whether he was popular, and you tried to show that he was not popular.

Maj. Hawes. I object to that question because the best evidence are the members of the regular Republican committee from each of the nine wards in the eleventh congressional district, and it can be shown by the chairman of the congressional committee or the members of the Republican congressional committee in that district and not by a judge of election, who does not hold official position in the Republican organization in that district.

Mr. BARRETT. It is also an attempt to show by one witness how the rank and file of Republican voters of the twenty-second ward felt toward him, which is impossible.

Mr. FEIGENBAUM. You might add here that it is impossible for us at this time, or within the short space of time in which we still have to take depositions, to bring in all the Republican ward committeemen, or even to subpœna them; the only way we have of actually bringing in such testimony in the short space of time is by asking members connected with the ward organizations who are called to testify regarding other matters, incidentally whether they know of those facts.

Mr. BARRETT. You had 40 days in which to do that, and could have taken depositions in a dozen or more places if you desired.

Maj. HAWES. And, furthermore, if the Republican city central committeemen were interested in this contest, one could be called on the telephone and brought here to testify during the afternoon. And we will waive notice if the chairman of the committee or any important member of the committee is summoned during the afternoon, or between now and 12 o'clock to-night.

Mr. FEIGENBAUM. We will endeavor to call some Republican city committeemen in the event we can reach them, since contestee has already waived or suggested he will waive the notice served on him, for the purpose of such man testifying. Answer the question now.

A. Of course, I can not speak for the committeeman; I can only speak for myself. I was heartily in favor of Mr. Bogy, as a Republican.

Q. You were present at the ward meeting there where the committeeman presided?—A. I was.

Q. Was he indorsed by this committee?—A. He was.

Q. By your ward?—A. Yes.

Q. Was there any dissent to the indorsement?—A. No.

Q. Did you hear of any Republicans——

Mr. BARRETT. I submit all this is wholly immaterial.

Mr. FEIGENBAUM. We will be through in a minute. I just want to straighten this out. Did you hear of any Republicans in your organization saying he or she was going to scratch Mr. Bogy's name on election day?

A. No; I don't remember that.

Q. You did not hear any member of your organization particularly indorse either Maj. Hawes or any other Democratic candidate?—A. Well, you can't get any man to have the good will of everyone in the ward, even though he is a Republican or Democrat. There are lots of Democrats who would scratch Mr. Hawes and lots of Republicans who would scratch Mr. Bogy.

Q. I am referring to the ward organization.—A. No; the ward organization had nothing against Bogy that I know of.

Mr. FEIGENBAUM. That is all.

Cross-examination by Mr. BARRETT:

Q. Now, Mr. Eiseman, you say you are engaged at 4257 West Easton in the electric business?—A. Yes, sir.

Q. You live there, do you?—A. Yes, sir.

Q. Do you live upstairs over your shop?—A. In the rear.

Q. In the rear of your shop?—A. Yes.

Q. You both live there and conduct your business at that place; a small establishment, isn't it?—A. Yes, sir.

Q. Now, then, you were speaking about a statement made by Commissioner Dempsey; wasn't the statement that Commissioner Dempsey made this: That the watchers were not to take any numbers of ballots except such as was indicated or noted on the recount clerk's sheets in each precinct; wasn't that the instruction?—A. Yes.

Q. That is the instruction he gave?—A. Yes.

Q. Now, at the table you were situated at, what was known as table No. 7, Linchey and Hohning were the Democrats, and Ens and yourself were the Republicans?—A. Yes, sir; that is right.

Q. And occasionally Mr. Bogy or myself would be called over, and our attention would be directed to some ballot; that was done in several instances, wasn't it?—A. Yes.

Q. And you would ask my views in the matter, and you would ask Mr. Bogy's views?—A. Yes.

Q. And in several instances, when we could not agree—Mr. Bogy and myself could not agree—I suggested placing these ballots in the disputed envelope and showing them to the board for decision?—A. Yes.

Q. In other words, any ballot that I requested to be referred to the board for decision, that was done in each instance?—A. Well, we were to understand that——

Q. Wait a minute; I am not asking you that. I am asking you whether or not in any instance I asked you to refer it, where it was a disputed ballot, where you did not refer it to the board, or did you?—A. No; I do not recall that.

Q. I say, if I asked in any instance to refer it, if there was doubt in my mind whether it should be counted or not counted, didn't you invariably put it in an envelope and leave it for the board's decision?—A. Yes, sir.

Q. If Mr. Bogy desired to have any particular ballot referred to the board, he could have them, too, couldn't he?—A. Yes; I expect he could.

Q. You would not refuse him that right, would you?—A. No.

Q. You would not refuse the right of either contestant or contestee or their counsel, if they desired any particular ballots referred to the board for decision, or inspection, you wouldn't deny them that right, would you?—A. I had no right to deny anyone.

Q. So that if there was any particular ballots that they desired to question the validity of or legality of, and they made the request of you at the time you would have put them in the disputed envelope and have them referred to the board for their decision?—A. Exactly.

Q. Now then, Mr. Bogy had a watcher at your table, didn't he?—A. No.

Q. How?—A. No.

Q. He had the privilege of having a watcher there?—A. Yes.

Mr. Feigenbaum. I object to that unless this witness knows what privilege Mr. Bogy had with reference to watchers.

A. Well, it was generally understood that both had watchers there. We would not have objected to it.

Mr. Barrett. There was a watcher there for Mr. Hawes, wasn't there?

A. There was.

Q. Now then, these instructions that you spoke of were in writing?—A. They were.

Q. Ten in number?—A. They were.

Q. There was an additional instruction given in writing about counting the duplicate ballots?—A. Not in writing; we didn't get any.

Q. Didn't you see one there, posted up on the post? Wasn't it read out loud and posted on a post there conspicuously, read aloud by Commissioner Arnold? Don't you recollect that?—A. My attention was not called to it.

Q. Let me see if I can refresh your memory. At first in all cases all duplicate ballots you were to put them in a disputed envelope and refer them to the board for decision?—A. We got that verbally; yes.

Q. And that was done, wasn't it?—A. Yes.

Q. For the first day or so?—A. But we counted those ballots.

Q. Another instruction was given in writing that you people should count all these ballots in all cases where the number of ballots in the boxes were less than those shown voted on the poll books; is that right?—A. What was that again?

Q. You were instructed to count all ballots having duplicate numbers when the number of ballots in the box was less than the number on the poll books?—A. We were supposed to count them in either case.

Q. You were not supposed to count them if you found an instance where there were more ballots in the box than were shown on the poll books, were you?—A. That is, if they were numbered, whether they are duplicates or not.

Q. What?—A. If they are numbered we are supposed to count them whether duplicates or not, but we made a notation of that at the bottom of it.

Q. Didn't the board limit you in its instruction in writing, or did it not?—A. It did not. We got no written instructions after the first.

Q. Wasn't there an instruction posted on the post there conspicuously, covering that very question?—A. Not that I saw.

Q. You did not see it?—A. My attention was not called to it.

Q. If it was posted there, you never did see it?—A. No.

Q. And you never heard any such instruction read?—A. Our instructions was to count all ballots that were numbered.

Q. Is that the only instruction you heard read?—A. That is the only one I recall now.

Q. And if such an instruction as I described was read, given and read, you have no recollection of it?—A. No.

Q. Now, if the watchers for the various parties to this contest were to take the numbers on the backs of all the scratched ballots and make a record of it, they could tell how each and every one of those voters voted, couldn't they?—A. If they had the poll books.

Q. I say, they could do that.

Mr. FEIGENBAUM. If they had the poll books, he said.

Mr. BARRETT. I say, by comparing them with the poll books they could tell exactly how they voted?

A. Yes.

Q. And that would disclose how they voted and would destroy the secrecy of their ballot, wouldn't it?—A. If they could get hold of the poll books it would.

Q. I am assuming that they compared them with the poll books.

Mr. FEIGENBAUM. I submit that is an improper assumption, because it has not been shown yet that any watchers could get hold of the poll books.

Mr. HAWES. That is a public record.

Mr. BARRETT. If you were to take all these numbers and give them to contestant or his counsel, and they were to make an examination or comparison with the poll books, it would disclose how each and every one of those voted?

A. Yes.

Q. However, if Mr. Bogy or his counsel, or anyone interested in his behalf, questioned the validity of some of the ballots that were on the table, and demanded that they be placed in the disputed envelope and referred to the board for decision, they could have that done at that time?—A. They could.

Q. And the numbers of those ballots that were in dispute would be noted by you gentlemen on your sheet and reported to the board?—A. They would.

Q. And that could be done in every instance that they made complaints; is that right?—A. At our table; yes.

Q. Now, that was the practice that you gentlemen at your table followed throughout?—A. We did.

Q. Now, did you, or any of your fellow clerks at that table, take any unfair advantage of Mr. Bogy or Mr. Hawes during that recount?—A. We did not.

Q. Did you attempt to do anything other than make a fair and honest recount?—A. That is all.

Q. And so far as you know the recount at your table was honestly and fairly conducted?—A. Yes, sir.

Q. Was there any partiality shown by you or any of the other three gentlemen at the table with you, for one side or the other?—A. No.

Q. You endeavored to be impartial throughout?—A. Exactly.

Q. And you did not undertake to act in the capacity of counsel or judge for either side, did you?—A. No.

Q. You were there not to represent particularly Mr. Bogy or Mr. Hawes, but you were there to recount the ballots fairly and honestly as they appeared to you?—A. To give them an honest count.

Q. To give them an honest count; and if there was any doubt about it as to the honesty or validity, it was to be referred to the board?—A. Well, not exactly that; no.

Q. I call your attention to instruction No. 8 [reading]:

"If there is any doubt as to whether any ballot has been properly marked, the clerk shall place said ballot in the envelope for the decision of the board of election commissioners."

A. That is right.

Q. (Reading.) "Also place in this envelope all ballots that have no corresponding number on the poll books and those that have duplicate or triplicate numbers. Also all other disputed ballots." Is that right?—A. Yes, sir.

Q. Now, what I wanted to get at was, if a ballot was disputed or questioned for any cause, that was to be put in the envelope and a notation made of it and the matter referred to the board?—A. That is right. That was according to our instructions in writing.

Q. Those were your instructions, I say, as I have just read them; and you conformed to them, didn't you?—A. Yes.

Q. Now, you say in ward 26, precinct 22, you saw some 12 or 13 Socialist and Farmer-Worker ballots that appeared to you to be in the same handwriting?—A. Yes.

Q. Did you just make a casual examination or inspection of them, or did you examine them carefully and minutely?—A. I went over them pretty carefully. The reason I did that was because in the record I made on the sheet there were no Farmer-Workers or Socialists, and I, knowing they were there, I asked to see them—why they were not counted—and they said they were all for Hawes. That is what caused me to look at those ballots.

Q. And you looked at them?—A. I did.

Q. Did you set them alongside of each other and examine one with the other?—A. Yes.

Q. Laid them out on the table?—A. That is, I held them together; I did not lay them on the table; I held them out and held them together separately.

Q. You did that publicly?—A. Yes, sir.

Q. Did you call anybody's attention to it?—A. I spoke to the judge about it, and he said that was not what we were there for.

Q. Who was the judge?—A. Ens.

Q. Who was Ens?—A. He was the Republican judge.

Q. Was Bogy there?—A. No; Bogy wasn't there.

Q. Did you call Bogy's attention to it?—A. I spoke to him about it.

Q. When?—A. Later on.

Q. When?—A. The same day.

Q. Did you tell him the number of ballots at that time?—A. No.

Q. How?—A. No; I don't think I did.

Q. What did you say to Mr. Bogy?—A. I said, "There is a lot of ballots there; it is funny to me that they are Socialists and Farmer-Workers and that they should all scratch your name, and as far as I can see all the handwriting was very similar."

Q. That is, in your opinion they were in the same handwriting?—A. Yes, sir.

Q. That is all you found, 12 or 13?—A. I think it was 13.

Q. They may have been written by the judge or clerk at the request of the voter?—A. They may have been.

Q. And if that were true there would be nothing irregular about it, would there?—A. No; if that was true it would not.

Q. And it is also true that judges of election do scratch ballots for voters at their request?—A. Yes; but it is not very likely that 13 would come in with the same——

Q. The total number of ballots cast in that particular precinct was 451, as shown by the sheet, by the examination made by you gentlemen. Would 12 or 13 ballots be an unusually large number to be scratched by the judge of election at the request of voters on that number of ballots?—A. Well, no; it would not if they had not all been Socialists and Farmer-Workers, but they happened to be all Socialists and Farmer-Workers.

Q. Does that change the situation? Supposing that they had been advised by some of their friends to be careful about the preparation of their ballot and to consult one of the judges and see that it was done properly, would there be anything improper in that?—A. No.

Q. That is possible, too, isn't it?—A. It is.

Q. Now, then, the examination that you have described of these ballots is the only examination that you made, isn't it?—A. Yes.

Q. Did you call Mr. Bogy's attention to this ward and precinct about those 12 or 13 ballots that day?—A. I did, later on; yes.

Q. What time of the day?—A. Well, that I can't just recall.

Q. Was it before or after you sealed the box up?—A. It was after we sealed the box.

Q. It was after you sealed the box. It was during the course of the recount you conveyed that information to him?—A. Yes.

Q. You did not call my attention to it, did you?—A. No; I did not.

Q. Didn't call it to the attention of any member of the board?—A. Not of the board; no.

Q. That you thought it was improper yourself. And the only person you conveyed that information to was Mr. Bogy; is that right?—A. No. Your watcher and the Democratic judge, we all spoke of it. It seemed peculiar that the 13, which were Farmer-Workers and Socialist Labor, should do the same thing.

Q. There would have been nothing to have prevented Bogy or his challenger, if he had one there, from calling the board's attention to it, would there?—A. No.

Mr. FEIGENBAUM. Just a minute; we object to that because the witness has already testified that he had no challenger, and what could have been done if he had one is all conjecture.

Mr. BARRETT. Did you notice Mr. Bogy or his counsel passing around the room at the time that you made this discovery, or any time thereafter prior to the sealing of the box?

A. No.

Q. Bogy himself passed around the tables during the course of the recount every day, didn't he?—A. Yes.

Q. And his counsel did, didn't he?—A. Yes.

Q. And his watchers were around?—A. No watchers; no; none at our table. But while we were counting that box there wasn't anyone around, as I remember it.

Q. Now, that is in ward 26, precinct 22. That was about the time that you heard Bogy say that he wanted the numbers of all the scratched ballots; is that right?—A. Well, I can't say that was the time.

Q. How?—A. That I can't say. We were working on that precinct at that time.

Q. Bogy did not say at that time that he wanted the numbers of all scratched ballots where there was a similarity of handwriting, did he?—A. Well, as I say, we were on the other side of the room; there was so much confusion there I did not get all of it.

Q. You did not get all of Bogy's conversation?—A. No.

Q. And you are not clear as to just what he said, are you?—A. No.

Q. And you are not clear as to just what he wanted to accomplish?—A. No.

Q. Now, you spoke about a box being open there, that it was torn, the seal was, and it was ragged. That might be caused by the boxes being shoved alongside of each other in close contact, in rubbing and tearing it off?—A. Well, that is what I explained, that I thought it probably was.

Q. And these boxes were kept in the vault?—A. They were all in the vault; yes.

Q. And two men had charge of that vault?—A. Yes.

Q. And one was a Democrat and the other was a Republican?—A. Yes.

Q. And those two men would take the boxes and pass them through the window to you gentlemen?—A. Yes, sir.

Q. Was anybody else permitted to go into that vault besides those two clerks?—A. Not that I know of.

Q. Now, then, you were speaking about ward 4, precinct 12, and you referred to some 30 ballots. I am going to get you to describe that again. I am not quite clear in my mind just what you testified to; I am going to ask you to repeat that.—A. Well, there was something like 35, I think, numbers open; I ain't positive as to the number; and then there was some thirty-odd ballots that were never numbered or initialed.

Q. Never numbered or initialed?—A. Yes.

Q. Those were not counted for anybody, were they?—A. No.

Q. And that was ward 4, precinct 12, was it?—A. I believe that is what it was; I ain't sure.

Q. I will hand you a sheet with your name signed on it. Is that your signature—of the fourth ward and twelfth precinct?—A. Yes.

Q. Now, that sheet indicates that you did not count those 30 ballots?—A. No; we did not.

Q. And that also shows that Mr. Hawes lost those votes?—A. Yes.

Q. And those are the 30 ballots that counsel was examining you about on your direct examination?—A. Yes; I expect it was.

Q. Now, you said that you were judge of election. You have a steel box, don't you?—A. Yes, sir.

Q. And as the voters vote their ballots are deposited in this steel box?—A. Yes.

Q. And at the close of the day when the election is over the box is opened?—A. Yes.

Q. And the ballots are all dumped on the table and counted, aren't they?—A. Yes, sir.

Q. They are spread out?—A. Yes.

Q. You separate the different straight party tickets, and the different scratched tickets?—A. Yes.

Q. And then you count them; is that right?—A. We do.

Q. And make a record of them?—A. Yes, sir.

Q. You make an entry of it on a tally sheet for each candidate?—A. We do.

Q. For each office?—A. Yes.

Q. You make a record of the number in writing of the vote received by each candidate on the statement and in the poll books?—A. Yes.

Q. Then those ballots are taken and folded up and put in a pasteboard paper box by the judges and clerks of election and a seal placed on them?—A. They are supposed to be sewed together.

Q. And the whole thing is returned. Do you know any provision in our law that requires you to sew them all together?—A. We get that instruction, and they furnish you with a needle and string.

Q. But I say, there is no particular order required, is there?—A. No. That is the instruction you receive, to sew them together, string them all.

Q. You mean tie them all together?—A. String them.

Q. String them?—A. Yes.

Q. And if they have no needle and thread they can not string them together?—A. The election commissioner furnishes you with a needle and string.

Q. Now, you said you had no way of discovering, so far as this recount was concerned, about fraud. If Mr. Bogy desired to challenge the validity of any ballot, or question the validity of any ballot, say, on the ground of similarity of handwriting, he could have gone to the table and demanded that those ballots be placed in the disputed envelope and referred to the board, couldn't he?—A. Yes.

Q. And then if he had done that the numbers of those particular ballots would have been taken, wouldn't they?—A. I expect they would.

Q. And in that way, by comparing the numbers on the back of the ballots with the poll books, he would ascertain who the voters were who cast those ballots, wouldn't he?—A. He could have done that.

Q. And then if he desired further he could have sent for those voters and ascertained just how they voted; is that right?—A. Yes; he could have done that.

Q. And he could have taken a photograph of those ballots, couldn't he?

Mr. Feigenbaum. I object to that because this witness certainly doesn't know whether we were permitted to take photographs or not. We could have taken one if permitted to do so by the board of election commissioners, but this man doesn't know that. That is not a proper question for him to answer.

Mr. Barrett. Well, you have taken photographs?

Mr. Feigenbaum. Yes; and there are some we haven't.

Mr. Barrett. Well, I say you could put them in the disputed envelope and have taken the numbers of them, and there would have been a record of it made?

A. Yes; as far as we were concerned.

Q. And by that means you could tell the identical ballots that were in dispute?—A. Yes.

Q. I am asking you, because the question was asked in direct examination if these same ballots then would be put in the disputed envelope on account of similarity of handwriting?—A. Which ballots are those?

Q. I say, if he questioned 10 or 12 ballots?—A. Yes; if he questioned any of them.

Q. And there was a record made of the number of ballots, and it was referred to the board of election commissioners, those particular ballots could be picked out, couldn't they?—A. Yes.

Q. And they could have photographed them if they had desired?—A. I suppose they could have, if they desired, if the board had permitted it.

Q. Never mind about the board. I am asking you the question. Then, having the particular ballot, if a photograph had been taken, the particular voters could be sent for and asked whether or not they write the name in on the ballot, and by that means you could determine whether or not it was a genuine or spurious ballot, couldn't you?

Mr. Feigenbaum. I object to the question as to what they could have done if they photographed these ballots, until there is a showing that we were given an opportunity to photograph such ballots.

Mr. Barrett. That is true, isn't it?

A. Yes; that could have been done. But I don't know how much authority they had to do those things; but that could have been done, of course.

Q. That could have been done. And by that means you could determine whether or not these names in which they claimed there was a similarity of writing were in fact the same handwriting; that could be definitely and accurately determined, couldn't it?—A. Yes.

Q. And if a complaint had been made by them at your table you would have made a record of them?—A. Yes.

Mr. Barrett. That is all.

Redirect examination by Mr. Feigenbaum:

Q. You were asked a few minutes ago by Mr. Barrett as to what contestant could have done, of the many things he could have done; were your answers all based on the assumption that he was permitted to do that, or simply that he could have done it if permitted?

Mr. Barrett. I object to that as being improper.

Mr. Feigenbaum. Answer the question.

The Witness. What was that question, again?

Mr. Feigenbaum. Repeat the question to him, Mr. Stenographer.

Mr. Barrett. I object to the question because it does not embrace the idea that the contestant was denied the right at this particular table by this witness or any of his associates—the right to have any disputed ballots referred to the board and a notation made thereof.

(Last question read, as follows: "Q. You were asked a few minutes ago by Mr. Barrett as to what contestant could have done, of the many things he could have done; were your answers all based on the assumption that he was permitted to do that, or simply that he could have done it if permitted?")

A. He could have done it if permitted. Of course, I don't know whether he was permitted or not.

Mr. Feigenbaum. Now, Mr. Eiseman, you were clerk in the employ of the election commissioners during the recount?

A. Yes, sir.

Q. You were not in the employ of Mr. Bogy?—A. No, sir.

Q. Now, as I understand, the clerks at the tables acted under the instructions of the board of election commissioners; is that correct?—A. They did.

Q. And you were to put disputed ballots in this disputed envelope?—A. Yes.

Q. Now, what was meant by disputed ballots, as you understood it?

Mr. Barrett. I submit that is covered by the written instruction.

Mr. Feigenbaum. Let him answer. You have asked him about what could have been done. Let him explain what he means.

A. Disputed ballots—what we considered a disputed ballot was where a name was written in and the other name not erased or scratched; where two names appeared on the same ballot.

Q. Now, if the four judges and clerks at the table agreed that a certain ballot was not disputed, would that be put in the envelope?—A. If it was not disputed?

Q. Yes.—A. No.

Q. Now, if all four judges and clerks agreed that a certain ballot was not disputed, under the rules that were given you by the election commissioners, would that be put in the disputed envelope just because somebody else, either a watcher, Mr. Bogy, Mr. Hawes, or their counsel, would ask you to put them in the disputed enevelope?—A. Well, that never came up.

Q. That never came up at your table?—A. No.

Q. Now, with reference to these scratched ballots that appeared to be in the same handwriting, you were asked by Mr. Barrett if Mr. Bogy had requested these be put in the envelope, whether that would not have been done. Was there any provision in the instructions to you directing you to put such ballots in the disputed envelope?

Mr. Barrett. I submit the instructions in writing speak for themselves, and the question for that reason is objectionable.

Mr. Feigenbaum. I want his explanation of it and his understanding of the instruction. Will you repeat that question to him?

Mr. Barrett. And I also suggest that the question is leading and suggestive, and the witness has fully testified about all this matter.

(Last question read as follows: "Now, with reference to these scratched ballots that appeared to be in the same handwriting, you were asked by Mr. Barrett if Mr. Bogy had requested these be put in the envelope, whether that would not have been done. Was there any provision in the instructions to you directing you to put such ballots in the disputed enevelope?")

A. On his say so, no; we didn't get any instructions to that effect.

Mr. Feigenbaum. Was that ever done at your table?

A. No; it never arose.

Q. Did Mr. Bogy ever ask you to put any ballots in the disputed envelopes where the four judges did not want it put in there?—A. No.

Q. I will ask you if Maj. Hawes ever asked you to do that?—A. No.

Q. Did his counsel, or either of his counsel, ever ask you to do that?—A. No.

Q. Did Mr. Barrett, in particular, ever ask you to do that?—A. No.

Q. Mr. Barrett was around near the table most of the time, wasn't he?—A. Well, he was there off and on like he was at any other table.

Q. And he would question certain ballots when he was around the table, or would he, or would he not?—A. No; he did not.

Q. He did not. Just looked at them?—A. Yes.

Q. And Mr. Bogy did the same?—A. Yes.

Q. And his counsel?—A. Yes, sir.

Q. Neither one of them ever asked you to put a ballot or group of ballots in the disputed envelope?—A. No.

Q. Did you understand that either Mr. Bogy or his counsel or Mr. Hawes or his counsel had the right to take any numbers of ballots other than those that were put in the disputed envelope by the judges and clerks themselves?—A. No.

Q. Do you know whether or not a watcher could get the poll books; did you ever see that done around there?—A. No; he could not.

Q. He could not get the poll books. Would you have given them to them if they wanted them?—A. No; we did not have them.

Mr. Barrett. I submit this line of examination is improper; that is all covered by a written stipulation.

Mr. Feigenbaum. You opened that up yourself, Mr. Barrett.

Mr. Barrett. I beg your pardon; I did not. You are opening up another line now that requires explanation.

Mr. Feigenbaum. The question has been asked by contestee's counsel as to what comparisons could have been made between these numbers on the ballots and the numbers on the poll sheets, or the names on the poll books, and what could have been learned thereby. I want to show——

Mr. Barrett. I was only referring to disputed ballots.

Mr. Feigenbaum. All right. I want to show that the watchers could not have access to those poll books with reference to any ballots. Now, will you read the question to him?

(Last question and answer read, as follows:) "Q. He could not get the poll books. Would you have given them to them if they wanted them?—A. No; we did not have them.")

The Witness. You see, we only had these poll books long enough to count the names on the poll books. We were not supposed to look at anything else. Then they were returned to the office.

Q. I just want to ask you one question about this particular precinct, precinct 22, ward 26. Here is a copy of the sheet, or an official copy, I should say, of the sheets, a memorandum kept and made by the four judges and clerks, showing your own signature to the same.—A. Yes.

Q. That indicates that not one vote was cast for either the Socialists, Socialist-Labor, or Farmer-Worker candidates for Congressman of the eleventh congressional district?

Maj. Hawes. I object to this question as asked for the deliberate purpose of consuming time, because the records show the vote for all candidates, and the question is asked deliberately for the purpose of consuming time.

Mr. Feigenbaum. I don't think there is any question that we want to consume time, because we want to get all the witnesses in that we can in our own time.

Maj. Hawes. I think you are; I think it will develop in a few minutes that you are consuming time.

Mr. Feigenbaum. I want to get all the witnesses I can here. I have a purpose in asking this question, which will appear in the next two questions. Go ahead and ask him that question.

(Last question read as follows: "That indicates that not one vote was cast for either the Socialists, Socialist-Labor, or Farmer-Worker candidates for Congressman of the eleventh congressional district?")

A. That is, for Congress; no.

Q. And yet there were 13 ballots in the box of Socialists and Farmer-Labor tickets, and all 13 scratched, and the name of Harry B. Hawes written in?—A. Yes; they were.

Q. And they all appeared to be in the same handwriting?—A. To me; yes.

Q. Do you know whether, generally speaking, Socialists, when they go into a polling place—you have been a judge for some six years—whether they are particular about voting their own ballots?—A. Well, they usually are.

Mr. FEIGENBAUM. That is all.

Recross-examination by Mr. BARRETT:

Q. Mr. Eiseman, do you want to be understood as testifying here that the board of election commissioners instructed you not to permit Mr. Bogy or his counsel, or Mr. Hawes or his counsel, to demand that ballots where there was apparently a similarity of handwriting, that they could not be put in the disputed envelope and a record made of them, and referred to the board? Do you want to be understood as saying that the board gave you any such instruction?—A. No.

Q. Under the instructions you received you could do that very thing, couldn't you?—A. Yes; they had a right to come there and set up any arguments they wanted to.

Q. And if they did that you would do it, wouldn't you? That is, you would put them in the disputed envelope and make a record of it, and refer it to the board; wouldn't you do that?—A. Yes.

Mr. BARRETT. That is all.

Redirect examination by Mr. FEIGENBAUM:

Q. You would put these in the disputed envelope for any cause, or for the causes that were permitted under the rules as given to you?—A. For the causes under the rules as given to us.

Q. You would not put them in there if you felt that the four judges———

Mr. BARRETT. Quit leading him.

Mr. FEIGENBAUM. I will withdraw the question. That is all.

Mr. BARRETT. If Mr. Bogy, or his counsel, made any complaints about any ballots on any ground and demanded that you put them in the disputed envelope and make a record of it, you would do that, or would you not do it?

A. I would have called on the election commissioners to decide that.

Q. But you would not have refused him that right, would you?—A. No.

Mr. BARRETT. That is all.

(Signature waived by agreement.)

Mr. HAWES. I desire at this time to enter my protest against the loss of time in the remaining hours of this deposition. We did not commence taking depositions on Thursday morning until 11 o'clock, and we quit at approximately 8 o'clock. On Friday the time was set for 10 o'clock; contestee was here at that time, but the depositions did not commence until 10.30. Contestee made arrangements to continue taking depositions until 11 o'clock on Friday night, and over his protest an adjournment was taken until 11 o'clock this morning. Contestee wanted the depositions taken at 9 o'clock. Thirty-five minutes' time was lost in taking depositions this morning because of delay occasioned by contestant. Contestee desires the record to show that at this hour, 1.10 p. m. on Saturday, that it is his belief that contestant is deliberately delaying the taking of testimony so that contestee will not be permitted to conduct a proper cross-examination of contestant. He is the most important witness in his own case, brought the charges, and now while there is time contestee wants the record to show that instead of calling various witnesses on material subjects and using that time between now and midnight, that it is the duty of contestant to give his testimony in time to permit contestee or his counsel to conduct a proper cross-examination. And if contestant does not give contestee sufficient time for cross-examination, that the congressional committee will take cognizance of the facts now placed in the record.

Mr. FEIGENBAUM. Contestant wants the record to show that yesterday morning, as well as the day prior, the contestant and his counsel were present at the hour appointed; that if any delay was occasioned for any reason it was not because of the absence of contestant, his counsel, or their desire to cause any delay.

That yesterday, during the cross-examination of one of the witnesses, no evidence having been developed of any material import on direct examination, the cross-examination of such witness consumed over an hour and a half's time, during which time contestant's counsel on several occasions called attention to the fact that large numbers of witnesses were waiting without the door to testify.

That of seven witnesses waiting four left, and contestant was unable to get in touch with them during yesterday during all day.

That at about 3.30 o'clock it was suggested that contestant, contestee, and their counsel go to the election commissioner's office and there some short depositions were to be taken; that a great deal of time was there consumed, and several short arguments—I place special emphasis on the word "short," as it seems to have a different meaning from that usually had—and that after the hour of 5 o'clock, when we left the election commissioner's office, there were no witnesses remaining, the other four witnesses appearing earlier in the morning having not returned.

That this morning contestant and counsel were here at the appointed hour of 11, but at that hour contestee's counsel had not arrived. That contestant's counsel left the room for a few minutes, having left after the hour of 11, and on his return at 11.25 or 11.30, I am not definite which, found the parties all ready, and we then proceeded with the depositions.

I want to further note that throughout this examination of various witnesses we have been very brief in our direct examinations, as the record will show and speak for itself, without any further comment from us; that the long time expended will all appear to have been during cross-examination by contestee and counsel.

That it is not our intent to-day to limit or not give proper opportunity to contestee to cross-examine the contestant when he is put under oath and caused to testify.

We want the record also to show that contestant was served with a notice some week or 10 days ago that contestee would take the deposition of contestant and that it was only yesterday, when for the first time, we were advised of the change of plans by contestee. That if for any reason, while we have already stated that we expect and will give contestee full and ample opportunity to cross-examine the contestant, if he is given the chance to take the stand and testify, and if no unusual delay is caused in the cross-examination of two or three other witnesses to-day, that contestee will still have full opportunity to further examine contestant during the next 40 days.

However, we will endeavor and feel satisfied that we will give contestee ample opportunity for the full examination, or, rather, cross-examination of contestant.

Mr. Bogy. Contestant wishes to state that instead of adjourning to go to lunch that a witness is on his way over here now from the courthouse, and I ask that he be examined immediately because there are only a very few questions to be asked him—I think only one or two—and if the cross-examination does not cause any great delay we ought to be able to get through with him in five or six minutes.

Contestant further wishes to state that he is willing to be cross-examined, and that he has nothing to fear as a result of the cross-examination, and that if there has been any delay it has been because of the filibustering tactics that have been going on on the part of contestee; that contestant has been very anxious to get as much evidence in as was poss'ble to get, having lost more than half of the time allotted to him by Congress because of the absence of the man who he expected to be his attorney at the proceedings.

Maj. Hawes. I desire now to ask contestant if he will agree to have his testimony introduced at 2 o'clock, or at 2.30, or at the present time? I am asking the contestant this question.

Mr. Feigenbaum. Just a minute. As counsel for contestant, I wish to say that contestant, my client, asked me to introduce the testimony of several other witnesses before he takes the stand, for the reason that there is a possibility of a long cross-examination of contestant, and I do not want to take the chance of him being held on the stand until midnight and then be given no opportunity of examining the other three witnesses.

However, I will assure you that we will put him on the stand in sufficient time to allow ample opportunity for cross-examination.

Maj. Hawes. Will counsel for contestant state now that he expects and hereby promises to put contestant on the stand and give opportunity for cross-examination?

Mr. Feigenbaum. Absolutely, without question.

Maj. Hawes. That will be entirely satisfactory.

JULIUS GOLDSMITH, a witness of lawful age, being produced, sworn, and examined on the part of the contestant, deposeth and saith:

Direct examination by Mr. FEIGENBAUM:

Q. State your name, please?—A. Julius Goldsmith.

Q. Where do you reside?—A. 3053 Glasgow Place.

Q. What is your occupation?—A. Deputy sheriff.

Q. Now, Mr. Goldsmith, how long have you been employed by the sheriff in that capacity as deputy?—A. By this sheriff since January 1.

Q. Were you also a deupty for the last sheriff?—A. Under Weinbrenner; yes, sir.

Q. Under Sheriff George B. Weinbrenner?—A. Yes, sir.

Q. For the last four years?—A. Yes, sir.

Q. You are one of the few remaining in the office?—A. One of the few.

Q. That indicates a very good record. Mr. Goldsmith, what is your politics? Have you any objection to telling us your politics?—A. Absolutely none.

Q. What is it?—A. Straight Republican.

Q. Have you ever been any other than a straight Republican?

Mr. BARRETT. I will concede that Julius has always been a straight Republican.

Mr. FEIGENBAUM. You concede he is a good Republican?

Mr. BARRETT. Always has been.

Mr. FEIGENBAUM. Mr. Goldsmith, in what precinct do you vote?

A. Twelth precinct, nineteenth ward.

Q. Now, were you about that precinct at the last general election, November 2, 1920?—A. I was.

Q. And were you in that neighborhod the greater part of the day?—A. All day.

Q. Were you an official for the party, or just in a private capacity?—A. No; just private, as a precinct worker.

Q. You were a Republican precinct worker?—A. Yes, sir.

Q. I will ask you if you saw Mr. Bogy in that vicinity during election day?—A. I did.

Q. Was there anything unusual that you noticed, or that he called your attention to in front of that polling place?—A. Yes, sir.

Q. State what that was.—A. There was a machine came up which had Mr. Harry B. Hawes's banner on the back of it, and stood in front of the polling place when Mr. Bogy entered the polling place, and Mr. Bogy was telling the police that that was against the law for a Senator——

Q. For a Congressman?—A. For a Congressman to have electioneering going on at the polling place. Of course, it was new to me, because I am used to bringing them in with a sign on or no sign. So, of course, I kind of listened to that, and I didn't know what he was talking about in the first place. It was new to me. And he notified the police to that effect. While he was arguing with the police, the machine left our precinct and went over on 3105—I believe it was—Sheridan Avenue.

Q. Was that another polling place?—A. No. They got a man out of there and went over to the other polling place on Webster and Cass.

Q. And did that machine return to your polling place?—A. No; it did not return at that time no more.

Q. How long had that machine been standing at your polling place?—A. Well, I can not very well say how long it was; it was for some time.

Q. What do you mean by "some time"—several hours, or what?—A. Well, I didn't pay much attention to that.

Q. You said it was not there all day?—A. It was not there all day because it pulled away.

Q. Well, what part of the day was it there?—A. It was in the forenoon.

Q. Was it there all of the forenoon?—A. No; not all of the forenoon.

Q. Give us an idea, not the exact minute.—A. Two or three hours, then.

Q. Two or three hours; it was at least two hours?—A. Something like that; yes.

Q. You said something about you being accustomed to bringing people up with a machine regardless of whether they had a banner on or not. Do you mean you would bring a voter to the polling place and then leave him and drive off?—A. No.

Q. Would you stand there for an hour or two with a machine?—A. No.

Q. You wouldn't do that?—A. That all depends.

Q. What do you mean by it "all depends"?—A. I used my machine last election, and that stood all day right around the polling place.

Q. At the last election?—A. Of course. I went to get somebody and took them home. Those that lived close by I did not take them home any more. As soon as I got their vote, that is all I cared about; whether they got home or not I did not bother.

Q. Now, you say the last election; do you mean November 2, 1920, or the one prior to that?—A. November 2, 1920.

Q. You say you used your own machine?—A. My machine was used that day for my own benefit.

Q. Were you using it for Mr. Bogy?—A. No.

Q. Did you have Bogy's banner on there?—A. No, sir; I had no banner on it at all.

Q. You were not electioneering for Mr. Bogy?—A. No, sir.

Q. How long would you leave your machine there at a time?—A. Well, during the day sometimes it would stand there two or three hours.

Q. And how near the polling place would you let your machine stand?—A. Well, it was right at the corner of the alley.

Q. Corner of the alley—how far away from the polling place is the alley?—A. I should judge about 40 or 50 feet; something like that.

Q. Forty or fifty feet; it wasn't right in front of the door?—A. No.

Q. This machine that you say had the name of Mr. Harry B. Hawes on it, was that in front of the door?—A. For a while it was in front of the door, and then it pulled up.

Q. Then pulled up a little?—A. Yes.

Mr. FEIGENBAUM. That is all.

Cross-examination by Maj. HAWES:

Q. Mr. Goldsmith, you know that this machine was being used by Senator Brogan and his friends that day?—A. I don't know who the party was in it.

Q. Do you know how close Mr. Brogan's saloon is to that particular voting precinct?—A. I do not.

Q. It is right at the corner.—A. If you will remind me where his place of business is, I can tell you.

Mr. BARRETT. Julius, you have always been a good, straight-laced, uncompromising Republican; is that right?

A. Yes, sir.

Q. You have always worked for the interest of the party, for the whole ticket?—A. Yes, sir.

Q. And you were doing that on election day?—A. Yes, sir.

Q. And you visited voters and brought them to the polls?—A. I did.

Q. And you did that that day?—A. Yes, sir.

Q. And did it with your machine?—A. Some.

Q. And you were doing that in an effort to get all the votes you could for the whole ticket from top to bottom—whole Republican ticket?—A. In fact, I was more interested for myself than I was for anybody else. I am plain spoken.

Q. That is, you wanted the candidate for sheriff to be sure of being elected?—A. I say so.

Q. But you yourself did nothing improper, did you?—A. No, sir.

Q. All you did was to make an honest, earnest effort, like you always do?—A. Absolutely.

Q. You saw nothing improper in somebody else having a machine there bringing voters to the polls, did you?—A. No, sir; so far as in my judgment I did not see anything improper until my attention was called when Mr. Bogy made the remark to the police officer in the polling place, open to everybody.

Q. Mr. Bogy went in the polling place?—A. Yes, sir; Mr. Bogy went in the polling place and hollered to the police that it was against the law for a Congressman to have his machine with his "ad" chasing up and around the polling place, as this one was.

Q. You had done this same thing yourself?—A. Yes, sir; but I had no "ad" on it.

Q. You saw nothing wrong in it?—A. I didn't see nothing wrong; I didn't think there was anything wrong with it.

Q. You don't think there was anything wrong now, do you?—A. No; I don't think so. If that is the law it must be wrong, but I never knew about it.

Q. The only complaint he made was that there was a machine there. Did Bogy have a machine?—A. No.

Q. He was on foot, was he?—A. He was on foot, and a crutch—cane, I mean to say.

Q. Nobody objected to Bogy going into the polling place, did they?—A. No; there was nobody objected.

Q. Nat Goldstein is the Republican committeeman for that ward?—A. Yes, sir.

Q. And Mr. Goldstein was very active in behalf of his party ticket all day, wasn't he?—A. I don't doubt that.

Q. Well, throughout the campaign he was?—A. Absolutely.

Q. And you conferred with Mr. Goldstein?—A. Yes, sir.

Q. And you are one of Mr. Goldstein's supporters and workers, aren't you?—A. Yes, sir.

Q. Good friend of Nat's, aren't you?—A. I say I am, and he knows it.

Q. Now, then, your Republican organization of that ward made a good effort to get out everything?—A. Everything we could.

Q. And you checked up every voter and saw that you got everything that was coming to you?—A. I don't believe we missed 15 votes.

Q. Now, did anything occur on election day, or since election day, that would lead you to believe, or any member of your organization, that there was anything improper in your precinct, or any other precinct in the nineteenth ward?—A. Well, I would not say about other precincts, but for my own precinct I will vouch for.

Q. There was nothing improper?—A. There was nothing improper.

Q. There was no repeating there?—A. No, sir.

Q. No slugging?—A. No, sir.

Q. No fighting?—A. No fighting.

Q. A peaceful election?—A. All the time.

Q. Were you there in the evening when they counted the ballots?—A. I was.

Q. Did you watch the ballots?—A. I say I did.

Q. Was there anything improper done during the counting?—A. Not that I know of. They might slip something over on me, but then they had to go some.

Q. In other words, Julius, you feel while you were watching there if they slipped anything over on you they were welcome to it?—A. I say they were.

Q. But you don't think they did?—A. No.

Q. And you think that every vote that was put in the box was counted as it was cast?—A. Absolutely.

Q. And did you know the judges and clerks who officiated there personally?—A. Every one of them.

Q. Both Republicans and Democrats?—A. Every one of them.

Q. So far as you know they were good, honest, conscientious men?—A. Yes, sir.

Q. Julius, did you hear of any trouble yourself on election day throughout any portion of the eleventh district?—A. I believe I did. I heard from a distance—not in my precinct.

Q. Not in your precinct?—A. I believe it was the precinct—I forget now what precinct that is; I believe it is the tenth.

Q. In your ward?—A. In my ward; yes.

Q. Did you hear what it was?—A. Well, that the judges and clerks would not let the people vote.

Q. In the tenth precinct?—A. I believe it was the tenth, if I ain't mistaken, on Garrison Avenue between Franklin and Morgan there.

Q. So far as you know, however, everything was conducted properly, and it was a quiet, orderly election?—A. In my precinct. I am not saying anything about others.

Mr. Barrett. That is all.

Redirect examination by Mr. Feigenbaum:

Q. Now, you said everything was regular, of course, in your precinct, as far as you could say?—A. Yes, sir.

Q. No voters voted out of their turn?—A. No, sir.

Q. When you brought up a voter with a machine you did not shove him in the door before anybody else?—A. No, sir.

Q. You just told him to stand in line and wait?—A. Yes, sir.

Q. And this machine that you saw standing there, Mr. Brogan's name was not on it?—A. No.

Q. The only name you saw was Harry B. Hawes?—A. Yes, sir.

Mr. FEIGENBAUM. That is all.

(Signature waived by agreement.)

Maj. HAWES. Now, I submit, there has not been a single point made by the testimony of this witness, and it is simply a consuming of time.

Mr. FEIGENBAUM. I want to say that the testimony of this witness, direct and cross-examination, did not consume 15 minutes, and that we went as rapidly as we could with it.

(At this point (1.40 p. m.) the further hearing of these depositions was continued until 2.40 p. m. of the same day, to be resumed at that hour at the same place.)

(And at 2.40 o'clock p. m., pursuant to the adjournment as above noted, the further hearing of said depositions was resumed, and the following proceedings were had, to wit:)

Maj. HAWES. I desire the record to show that, agreeable to understanding, contestee and counsel, notary and stenographer were here at 2.40 o'clock, and have been waiting ever since for contestant to place a witness on the stand for examination, and he now proceeds at 4.50 o'clock p. m., a loss of 2 hours and 10 minutes.

Mr. FEIGENBAUM. Is there any objection to Mr. Weisman being present when Mr. Haffner's deposition is being taken?

Maj. HAWES. No objection whatever.

Mr. BARRETT. Are you appearing as an attorney in this case?

Mr. WEISMAN. No, sir; but I am his attorney in all matters.

Mr. FEIGENBAUM. Let the record show that we have been also about the office; that is, contestant and his attorney, during the period of time just outlined by contestee, and that we have been waiting the appearance of either one of two witnesses subpœnaed here, and one witness has just appeared and is now ready to testify.

WILLIAM HAFFNER, a witness of lawful age being produced, sworn, and examined on the part of the contestant, deposeth and saith:

Direct examination by Mr. FEIGENBAUM:

Q. Will you please state your name?—A. William Haffner.

Q. Where do you reside, Mr. Haffner?—A. Nineteen hundred Whittier Street.

Q. Nineteen hundred Whittier; what ward and precinct is that located in?—A. Twenty-second ward, seventh precinct.

Q. Is that in the eleventh congressional district?—A. Yes, sir.

Q. What is your politics, Mr. Haffner?—A. Republican.

Q. Have you consistently been a Republican?—A. Yes, sir.

Q. Are you a member of the twenty-second ward Republican organization?—A. Yes, sir.

Q. That is the regular Republican organization of the twenty-second ward of this city?—A. Yes, sir.

Q. Who is the committeeman from that ward?—A. George Hohman.

Q. Is he treasurer of the Republican central committee?—A. Yes, sir.

Q. I will ask you if Mr. Hohman is also chairman of the eleventh district Republican congressional committee?—A. Yes, sir.

Q. Were you present at any of the ward meetings?—A. Yes, sir.

Q. Of the Republican twenty-second ward meetings prior to the election?—Yes, sir.

Q. I refer to the last general election of Novmber 2, 1920?—A. Yes, sir.

Q. During those meetings have you ever heard any criticism of the Republican candidate for Congress, Mr. Bernard P. Bogy, by any members of the twenty-second ward Republican organization?—A. no, sir.

Q. Had he been unanimously recommended by your ward organization?—A. Yes.

Q. Do you know of your own knowledge whether or not he was recommended by Mr. Hohman personally?—A. Yes, sir.

Q. As a Republican?—A. Yes, sir.

Q. I will now ask you whether he received the full indorsement of the twenty-second ward Republican organization?—A. As far as I know I believe he did.

Q. He did?—A. Yes, sir.

Q. Are you in business at 1900 Whittier Street?—A. 1906.

Q. Nineteen hundred and six; are you in business there for yourself?—A. Yes, sir.

Q. What is the nature of your business?—A. Hay and grain.

Q. At your place of business did you have opportunity to meet with many voters of the eleventh congressional district?—A. Yes, sir.

Q. Republican and Democratic?—A. Yes, sir.

Q. Do you know whether or not the Republican voters, or those that you have spoken to in that district favored Mr. Bernard P. Bogy for Congress from the eleventh congressional district?

Mr. BARRETT. I object to that question as too general, and not the proper way to determine how Mr. Bogy stood with the rank and file of the voters of the eleventh district.

Mr. FEIGENBAUM. The only purpose in introducing this evidence at this time is to refute the imputations made on cross-examination of some other witnesses, or the imputations in the questions put on cross-examination of some witnesses, that Mr. Bogy did not receive the proper indorsement and support among the Republicans, the rank and file of the Republicans and especially of the Republican organizations of the eleventh congressional district.

Maj. HAWES. I desire to state that counsel is in error in his statement.

Mr. FEIGENBAUM. I will be glad to be corrected if contestee will do so as to in what respect I am in error.

Maj. HAWES. There is nothing in the record, so far as I know, to substantiate his statement. The only statement that has been made was made by me, that contestant has not produced a member of the Republican city central committee, or any members of the women's organization, one woman from each ward, or of the Republican precinct organization, numbering 155 men, and of the women's organization of 155 women. The only two witnesses he has produced are members of two general ward clubs.

Mr. FEIGENBAUM. I want it noted that contestee in his answer to the notice served of contest set forth as one of his reasons for opposing the contest that contestant did not receive the active support of Republicans active in politics.

Q. Will you answer the question? Read the question, please.

(Last question read as follows:) "Do you know whether or not the Republican voters, or those that you have spoken to in that district, favored Mr. Bernard P. Bogy for Congress from the eleventh congressional district?"

A. Yes, sir.

Q. Are you a Republican official or do you hold any official position in the Republican organization?—A. I am precinct chairman of the seventh precinct.

Q. You are precinct chairman of the seventh precinct of the twenty-second ward?—A. Yes, sir.

Q. That is in the eleventh congressional district?—A. Yes, sir.

Q. And is that the regular Republican organization for that ward and precinct?—A. Yes, sir.

Q. I will ask you whether you talked to Democrats in that district?—A. I did.

Q. Now, did you hear many expressions of opinion there on Mr. Bogy's candidacy? If so, what were they?—A. Well, a good many said they were going to vote the Republican ticket, and especially for Mr. Bogy.

Mr. BARRETT. I submit that is too general, and I move it be stricken out. It is purely hearsay.

Mr. FEIGENBAUM. We want to show that it works both ways, and that every candidate has opposition to some extent.

Maj. HAWES. Just ask him to name a few.

Mr. BARRETT. We will get that on cross-examination.

Mr. FEIGENBAUM. Do you care to name any of your Democratic friends whom you have spoken to?

A. No, sir.

Q. You don't care to mention their names?—A. No, sir.

Maj. HAWES. I object to leading the witness, Mr. Commissioner.

Mr. FEIGENBAUM. I believe that is all.

Cross-examination by Mr. BARRETT:

Q. Now, Mr. Haffner, you say you are precinct chairman of your precinct?—A. Yes, sir.

Q. How many precincts are there in your ward?—A. Twenty-one, I think.

Q. Twenty-three, are there not?—A. I believe 21, if I ain't mistaken; maybe there is 23; I don't know.

Q. Well, do you know how many there is—21 or 23?—A. I can't say.

Q. I am not trying to confuse you now.—A. I know you are not trying to confuse me, but I don't remember just how many precincts was added to our ward; it used to be 18, but I don't know how many was added to our ward.

Q. I will say, for your information, there are 23.—A. All right, sir.

Q. I have no desire to confuse you. Twenty-three precincts, all told, in the twenty-second ward, and of that number the eleventh, twelfth, thirteenth, fourteenth, and fifteenth are not in the eleventh congressional district—1, 2, 3, 4, 5; that would leave 18 precincts of the twenty-second ward in the eleventh congressional district. Now, are you personally acquainted with each and every one of those 18 precinct men?—A. Yes, sir.

Q. Know them all?—A. Yes, sir.

Q. You have had meetings with them?—A. Yes, sir.

Q. Are they residents of this city?—A. Yes, sir.

Q. Have they all been in the city in the last two or three weeks?—A. They were residents of the city for the last few years.

Q. I say, have they been in the city? Do you know whether or not they have been in the city of St. Louis during the last three weeks?—A. The last three weeks we didn't have any meeting.

Q. Well, did you meet any of them in the last three weeks?—A. Some of them; yes.

Q. How many?—A. Oh, I can't say just exactly how many; when I get up to the club.

Q. They could be easily found, couldn't they?—A. Yes, sir.

Q. And served with a subpœna?—A. Yes, sir.

Q. Where does Mr. Hohman live?—A. He lives on Natural Bridge Road and Newstead.

Q. What business is he engaged in?—A. He is in the grocery business and saloon business, I think.

Q. Has he been in the city of St. Louis in the last three weeks?—A. Yes.

Q. Would there have been any difficulty about serving a subpœna on him in the last three weeks?—A. I don't think it would.

Q. Do you know one Elmer Moone, the Republican committeeman of the twentieth ward?—A. Yes, sir.

Q. He is employed over here at the courthouse as a deputy clerk?—A. Yes, sir.

Q. He has been in the city in the last three weeks, hasn't he?—A. I can't say.

Q. How?—A. I don't know.

Q. Do you know who the Republican committeeman is of the second ward?—A. No; I don't think I do.

Q. Mr. Bishop; do you know him?—A. I don't think I know him.

The NOTARY. Bishop is in the third.

Mr. BARRETT. Bishop is in the third. Gus Oetting; do you know Gus Oetting?—A. No; I don't.

Q. He is a clerk over here in the courthouse.—A. No; I don't know him.

Q. Do you know Nick Polito?—A. Yes, sir.

Q. He is the committeeman from the fourth ward?—A. Yes, sir.

Q. Has he been in the city in the last three weeks?—A. I have not seen him; I don't know.

Q. He is in the employ of the city of St. Louis, isn't he?—A. Yes, sir.

Q. He has been in the employ of the city government and was here for the last three weeks?—A. I can't say; I don't know.

Q. Do you know Eddie Butler?—A. Yes, sir.

Q. He is committeeman from the eighteenth ward?—A. Yes, sir.

Q. Have you seen him in the last three weeks?—A. No, sir.

Q. He is engaged in the practice of law in this city?—A. Yes, sir.

Q. Do you know his father-in-law, Henry W. Weeke?—A. Yes, sir.

Q. He is also active in Republican politics in that ward?—A. Yes, sir.

Q. Do you know Nat Goldstein, the circuit clerk?—A. Yes, sir.

Q. Have you seen him in the last three weeks?—A. I haven't seen Nat in the last year.

Q. He is committeeman from the nineteenth ward?—A. Yes, sir.

Q. And Mr. Hohman, I believe you spoke about?—A. Yes, sir.

Q. Do you know I. Joel Wilson?—A. I do.

Q. He is assistant circuit attorney?—A. Yes, sir.

Q. And he has been in the city the last three weeks?—A. I can't say; I don't know.

Q. Well, he has been appointed by Mr. Howard Sidener since the first of the year, and he has been acting as assistant circuit attorney since the first of the year?—A. I presume he was.

Q. Do you know Mr. Becker?—A. Yes, sir.

Q. The committeeman from the twenty-seventh ward?—A. Yes, sir.

Q. He is employed in the city street department?—A. Yes, sir.

Q. Have you seen him in the last three weeks?—A. I saw him last Tuesday.

Q. Where did you see him?—A. Down at the city hall.

Q. So he could be reached by subpœna, couldn't he?—A. I suppose he could.

Q. All of these committeemen I have mentioned could be reached by subpœna, couldn't they?—A. I presume they could.

Q. Now, Mr. Haffner, you don't undertake to testify for every Republican voter in the eleventh district, do you, as to how they intended to vote? They didn't all communicate with you, did they?—A. I testified to what I heard in the organization.

Q. What organization?—A. Twenty-second.

Q. In your own precinct?—A. In the whole ward.

Q. In the whole ward?—A. Yes, sir.

Q. How many Republicans told you they were going to vote for Bogy?—A. They all was satisfied to vote for Bogy.

Q. They didn't tell you individually they were going to work for Bogy?—A. I can't say how many had said it individually, but I spoke to a good many.

Q. That is, officially, they indorsed him?—A. Officially they indorsed him and they were going to support him.

Q. You don't know whether they did as a matter of fact, do you?—A. No.

Q. You don't know whether they worked for him election day, as a matter of fact, do you?—A. No, sir.

Q. You don't even know who they voted for, do you?—A. No, sir.

Q. So you are not undertaking to testify at this examination to who they voted for, are you?—A. No, sir.

Q. You don't know who the Republicans of the twenty-second ward voted for, do you?—A. No, sir.

Q. You are not undertaking to testify for whom they voted, are you?—A. No, sir.

Q. People generally, the mass of the people, don't come out and tell people whom they are going to vote for, do they?—A. Sometimes they do.

Q. I say a few do, but the mass, the great majority don't?—A. All the expressions I heard in the organization, they were all for Bogy, and said they were going to vote for Bogy.

Q. I have got through with that now; I am speaking about the voters of the twenty-second ward. You are not undertaking to testify how they voted, are you?—A. No; I guess not.

Q. I say the great mass of the people don't generally tell people publicly how they are going to vote, do they?—A. I can't say that, neither.

Q. I say they don't generally do it?—A. I don't know.

Q. Well, they didn't tell you?—A. Yes; those I spoke to.

Q. I am talking about the mass of the people?—A. I am telling you the mass of people I spoke to.

Q. Oh, the mass that you spoke to?—A. Yes, sir.

Q. How many did you speak to?—A. I don't know; several hundred.

Q. Several hundred?—A. Yes, sir.

Q. Where?—A. Right in the twenty-second ward.

Q. What is the population of the twenty-second ward?

Mr. Feigenbaum. If you know.

A. I will have to look that up. I don't know. I didn't put that down.

Q. Well, in the twenty-second ward, according to the returns of the judges and clerks, Bogy received 4,367 and Hawes received 3,473, over 7,700 voters having voted for those two men?—A. Yes, sir.

Q. And out of that number you say you saw several hundred?—A. Yes, sir.

Q. How many?—A. I can't tell the exact amount.

Q. You don't know?—A. No, sir.

Q. Possibly 200?—A. Possibly 300, possibly 500.

Q. Possibly 500?—A. Yes, sir.

Q. Any more?—A. I can't say.

Q. You would just meet them casually?—A. Yes, sir.

Q. You did not make a canvass of the ward?—A. No, sir.

Q. So that you don't know, then, what their sentiments were?—A. No, sir.

Q. In other words, you were just undertaking to talk with a few that you met casually going about your business, and knowing your political activity?—A. Yes, sir.

Q. Now, did you take any hand in the Republican primary in August, 1920?—A. Yes, sir.

Q. Have you any objection to saying who you supported for Congress?—A. I supported Mr. Bogy.

Q. As against Otto Stifel?—A. Yes, sir.

Q. In that primary—it was a pretty hotly fought primary, wasn't it?—A. Not as I know of.

Q. It wasn't?—A. Not as I know.

Q. It was a quiet primary, was it?—A. Well, it was just like every other primary—everybody wanted to be elected.

Q. Sure. And wasn't it conducted with some heat and some feeling?—A. Not as I know.

Q. Wasn't there some things said there that ought not to have been said?

Mr. Feigenbaum. I object to that unless it is shown what was said that ought not to have been said. That is a matter of opinion as to what ought to have been said in an election contest.

Mr. Barrett. Wasn't there at that primary personal accusations by some of the friends of Mr. Bogy against Mr. Stifel, the late Otto Stifel?

A. No, sir; not as I know.

Q. Otto Stifel was nominated?—A. He was.

Q. Do you remember what Otto Stifel's vote was at the primary?—A. No, sir.

Q. Do you remember what Bogy's vote was at the primary?—A. No, sir.

Q. Stifel was nominated overwhelmingly, wasn't he?—A. He was given a big majority.

Q. The vote for Stifel was five to one as against Bogy?—A. I can't say; I don't know.

Q. Stifel personally was a very popular man, wasn't he?—A. Oh, yes.

Q. Well liked; is that right?

Mr. Feigenbaum. We don't question that.

Mr. Barrett. You are not testifying. Answer the question, please. Stifel was a man well liked?

A. Well, he was well liked by some people, and by some people he wasn't.

Q. Well, wasn't he personally popular and had a large number of friends?—A. He had.

Q. And Mr. Bogy's nomination was brought about by the committee after Mr. Stifel's death?—A. Yes, sir.

Q. Mr. Bogy was not nominated in the primary?—A. No, sir.

Q. You spoke about some Democrats scratching Hawes and voting for Bogy?—A. Yes, sir.

Q. Can you name any such men?—A. I don't care to mention them.

Q. I say can you?—A. I don't care to mention them.

Q. I am not asking you to name them; I am asking you can you?

Mr. Cummings. Could you if you would?

Mr. Feigenbaum. Could you if you wanted to? That is the question.

A. I could.

Mr. Barrett. Now, then, that you could, and give the number, I will of course ask you their names?

A. I won't give you the number and I won't give you their names.

Q. You don't care to give the number or the names?—A. No, sir.

Q. Well, that is all right; I am not going to force you to do it. Now, do you know where Mr. Bogy resided within the eleventh district—what his residence was?—A. I don't know just exactly the number. I know he lives out west some place.

Q. Out west where?—A. I can't say.

Q. Somewhere on Maple Avenue?—A. I believe I heard that is where he lives.

Q. You heard that he lived on Maple Avenue?—A. Some place around west; I don't exactly know.

Q. That is in what is known as Cabany, isn't it?—A. I don't know.

Q. Do you know how far west it was; was it west of Union Avenue?—A. No; I can't say.

Q. You don't know?—A. No.

Q. Do you know what district that place is in where he resided?—A. No, sir.

Q. Do you know whether or not that residence is in the eleventh or the tenth district?—A. No, sir.

Q. Do you know what ward that is in?—A. No, sir.

Q. Is the twenty-eighth ward in the eleventh district?—A. No, sir.

Q. That is in the tenth district, is it not?—A. Yes, sir.

Q. You know where Maple Avenue is?—A. I do.

Q. Maple Avenue is south of Page Avenue, isn't it?—A. Yes, sir.

Q. That is how many blocks north of Delmar?—A. That I can't say neither; I don't know.

Q. But it is south of Page Avenue?—A. South of Page Avenue.

Q. Mr. Haffner, do you know that 5943 Maple Avenue is in the twenty-eighth ward?—A. No, sir; I don't know it.

Q. You know that it is in the tenth district?—A. I presume it is in the tenth district.

Q. Were you Mr. Bogy's manager in the primary campaign?—A. No, sir.

Q. In your ward?—A. No, sir.

Q. Who was his primary campaign manager?—A. I don't know.

Q. You don't know; but you worked actively for him, did you?—A. I say yes.

Q. And did everything you could to help him at the primary, did you?—A. I did.

Q. Did you have occasion to call him up on the telephone?—A. What?

Q. Did you ever call him up on the telephone during the primary campaign?—A. I don't know his telephone number even.

Q. You don't know his telephone number?—A. No.

Q. You never called him up on the telephone?—A. No, sir.

Q. Did you call him up on the telephone in the election campaign?—A. No, sir.

Q. Then you were not in active and daily touch with him, were you?—A. No, sir.

Mr. Barrett. That is all.

Redirect examination by Mr. Feigenbaum:

Q. Did Mr. Hohman, the committeeman of the twenty-second ward, ever make a statement before the organization at large at the meetings as to the candidacy of Mr. Bogy?

Mr. Barrett. I object to that question, as it calls for pure hearsay testimony. Mr. Hohman is in the city, and could be subpœnaed as a witness, and he would be the best witness to testify. As to any statements that this witness might testify to that were made by Mr. Hohman would be pure hearsay.

Mr. Feigenbaum. Our purpose is not to bring the statement of any individual as being material in itself, except as heard by others. Will you answer the question now, please?

A. Yes, sir.

Q. What did he say regarding Mr. Bogy?

Mr. Barrett. I object to that question for the same reason.

Mr. Feigenbaum. Answer the question.

A. Why, he didn't speak just particularly of Bogy. He says we shall go down the line for the Republican ticket, and the main thing we shall get the eleventh congressional district Republican.

Q. Now, you did say a few minutes ago that after the death of Mr. Otto Stifel, who was nominated as the Republican candidate for Congress in the eleventh congressional district, that the eleventh congressional Republican committee met and declared Mr. Bogy as their nominee; is that correct?—A. That is correct.

Q. Did Mr. Hohman say anything about Mr. Bogy's ability as a candidate for Congress from the eleventh congressional district?

Mr. Barrett. I object to that question, first, because it is too general—does not specify the time or place—and, secondly, because it is hearsay; and it has already been testified by this witness that Mr. Hohman was in town and could be reached by a subpœna; and I submit anything that this witness might testify to as to statements made by Mr. Hohman would be purely hearsay; and I would suggest that the best way of proving that would be to produce Mr. Hohman himself.

Mr. Feigenbaum. Again I suggest that our purpose is not to get Mr. Hohman's statement as much as to get the effect of Mr. Hohman's statement on the Republican voters of that district. Repeat the question, please.

(Last question read, as follows: "Q. Did Mr. Hohman say anything about Mr. Bogy's ability as a candidate for Congress from the eleventh congressional district?")

A. Yes, sir.

Q. What did he say?—A. After Mr. Bogy made several speeches in our ward, he says: "I believe he will make the best Congressman we ever had."

Mr. FEIGENBAUM. That is all.

Recross-examination by Mr. BARRETT:

Q. How long have you known Mr. Bogy?—A. I have been knowing him since before the primary.

Q. Before the primary?—A. Yes, sir.

Q. That was August, 1920?—A. Yes, sir.

Q. Was that the first time you were acquainted with him?—A. Yes, sir.

Q. You were never acquainted with him before?—A. No, sir.

Q. And you know nothing about his previous political activity, do you?—A. No, sir.

Mr. BARRETT. That is all.

(Signature waived by agreement).

Mr. BARRETT. Just note on the record that we concluded the taking of this witness's deposition at 5.25, and are now waiting for another witness.

Mr. FEIGENBAUM. It is now 10 minutes to six. Suppose we adjourn now and take an hour for dinner, and then we will put Mr. Bogy on the stand.

The NOTARY. We will adjourn, then, until 7 o'clock.

(At this point (5.45 p. m.) the further hearing of these depositions were continued until 7 o'clock p. m. of the same date. And at 7 o'clock p. m. of the same date, the further hearing of these depositions was resumed at the same place, and the following further proceedings were had, to-wit:)

Mr. BARRETT. Just let the record show that contestee and his counsel, the notary and stenographer were here at 7 o'clock, and Mr. Bogy, the contestant, now appears at 7.35 for the purpose of giving his deposition, and being the only witness who did appear at the evening session.

BERNARD P. BOGY, a witness of lawful age, being produced, sworn, and examined on behalf of the contestant, deposeth and saith:

Direct examination by Mr. FEIGENBAUM:

Q. Will you state your name?—A. Mr. Bernard P. Bogy.

Q. Where do you reside, Mr. Bogy?—A. I am residing at 5943 Maple Avenue, St. Louis.

Q. On November 2, 1920, where did you reside?—A. 1411–A Rowan Avenue.

Q. How long did you reside there?—A. Well, I first moved there on the 8th of May. I had been there before, of course, a number of times, but I mean I took up my legal residence there on the 8th of last May.

Q. Do you care to state your purpose in moving into that address on Rowan Avenue?—A. I moved to that address, where my cousin was living, because I intended to make the race for Congress in the eleventh congressional district, and I wanted to be able to adopt a legal residence there so that I could cast my vote for myself and vote in that district.

Q. What is your occupation, Mr. Bogy?—A. Well, you might call it broker.

Q. You are a broker?—A. Yes; chiefly have been attending to affairs for my mother lately.

Q. Were you prior to November 2, 1920, nominated as the Republican candidate for Congress from the eleventh congressional district?—A. I was.

Q. And by what body or organization of the Republican Party were you so nominated?—A. I was nominated by the Republican Party of the eleventh congressional district of the State of Missouri.

Q. On the 2d of November, 1920, which was the last general election, were you the Republican candidate for Congress from the eleventh congressional district?

Mr. BARRETT. We will concede that.

A. I was.

Mr. FEIGENBAUM. And Maj. Harry B. Hawes was the Democratic candidate for the same office?

A. He was.

Q. Were you elected to that office?—A. I believe that I was.

Mr. BARRETT. Oh, well, I object to that question as calling for a conclusion, and ask that it be stricken out.

Mr. FEIGENBAUM. You have just stated you believe you were elected to the office of Congressman from the eleventh congressional district——

Mr. BARRETT. Now, just a minute. I am just warning you, you are getting into a lot of argumentative stuff——

Mr. FEIGENBAUM. No; you will get this question in a minute.

Q. Is that the reason for your institution of this contest; your belief that you were elected to such office?—A. I would like to explain what I meant by that. On the face of the returns——

Q. No; just answer the question.—A. Yes.

Q. Some questions have been asked of witnesses on cross-examination as to your not having received the support of Republican groups in the eleventh congressional district, or organization, whose strength was felt among the voters in such district.

Mr. BARRETT. I don't believe there was any such question asked as that, and I will therefore object to the question.

Maj. HAWES. The record will show that no such questions were asked.

Mr. BARRETT. And the question I think is too general, anyway.

Mr. FEIGENBAUM. I have not asked the question. That was just my reference to the question.

Q. I will ask you whether or not you received the indorsement of the several Republican ward organizations within the eleventh congressional district?

Mr. BARRETT. I object to that, because the record of those organizations are the best evidence as to their action, and his statement would be just mere hearsay. I think the secretary of those organizations could have been subpœnaed as a witness, and the minutes of the proceedings in which the alleged action was taken could have been brought in here.

A. I did on the regular organizations, and also of some of the outside organizations, for instance, in the——

Mr. BARRETT. Now, you are going on the outside again.

Mr. FEIGENBAUM. Now, I show you a letter purporting to have been written by one Chris Bimmerle, secretary for the Republican Club of the twenty-sixth ward, and ask you whether or not you received this letter?

A. Yes.

Q. Is that ward within the eleventh congressional district?—A. Yes.

Mr. FEIGENBAUM. I will ask that that be marked "Exhibit G" and offer it in evidence and ask that it be made a part of the record.

(Said Exhibit G offered in evidence by the contestant is in words and figures as follows, to wit:)

CONTESTANT'S EXHIBIT G.

HALL OF THE REPUBLICAN CLUB
OF THE TWENTY-SIXTH WARD.

Hon. BERNARD P. BOGY.

DEAR FRIEND BOGY: As chairman of publicity committee and secretary of the Republican Club of the twenty-sixth ward, wish to extend most sincere thanks in the name of our organization for your presence and your able talk before your many friends in our ward, hoping you are successful in your undertaking, and would be pleased to call you Congressman Bogy, and will say our organization is with you.

Very respectfully, yours,

CHRIS BIMMERLE, *Secretary.*

Q. Mr. Bogy, are there other organizations within the eleventh congressional district which called or held meetings with a view to making indorsements of the several candidates for the offices for which the general election took place on November 2, 1920?—A. Yes.

Q. Is the St. Louis Council, Friends of Irish Freedom, such an organization?—A. It was, but not entirely limited to that district.

Q. Was the membership of that organization largely located in the eleventh congressional district?—A. I believe so.

Q. Is the Rev. Peter J. O'Rourke president of that organization?—A. He is.

Q. I show you what purports to be a letter written by Peter J. O'Rourke, president of the St. Louis Council, Friends of Irish Freedom, and ask you whether you received that latter?—A. Yes; I did.

Mr. FEIGENBAUM. I ask that that be marked "Exhibit H" and offer it in evidence.

(Said Exhibit H offered in evidence by the contestant is in words and figures, as follows, to wit:)

CONTESTANT'S EXHIBIT H.

ST. LOUIS COUNCIL, FRIENDS OF IRISH FREEDOM,
1313 Academy Avenue, St. Louis, Mo., October 18, 1920.

Officers: Rev. Peter J. O'Rourke, president; Patrick Flood, treasurer; John J. Concannon, recording secretary; Thos. J. O'Connell, corresponding secretary.
Executive committee: Hon. O'Neil Ryan, Dr. R. Emmet Kane, Michael J. Cullinane, John A. Burke.

Mr. BERNARD P. BOGY,
St. Louis, Mo.

DEAR SIR: The St. Louis Council, Friends of Irish Freedom, have indorsed your candidacy for Congressman from the eleventh congressional district of Missouri.

Your emphatic and unqualified stand in opposition to the un-American League of Nations, and adherence to the traditional American policy of recognition without intervention, stamps you as worthy of the support of all liberty-loving American citizens.

If the organization can be of any further assistance to you in your district, please notify us and we will be delighted to do anything in our power to help secure your election to office.

Thanking you for your courtesy,
Yours, truly,

PETER J. O'ROURKE.

Q. Were the meetings held by the Friends of Irish Freedom public meetings and largely attended, if you know?

Mr. BARRETT. Now, wait a minute. If he did not attend the meetings himself he better not attempt to testify as to that.

A. I will only speak of those I did attend. There was one very large meeting at the Odeon.

Q. Can you give us an idea how many persons were present there?—A. I should roughly estimate about 2,000; I am not positive.

Q. Were there newspaper reporters there present?—A. There were a number of them.

Q. Do you know whether the meeting you have just referred to was publicly reported in the press?—A. It was.

Q. I show you what purports to be a copy of the St. Louis Post-Dispatch, dated Thursday evening, October 14, 1920, and ask you whether you have ever seen this before?—A. I have.

Q. The articles you have just identified appear to be on page 13 of this issue of the home edition of the Post-Dispatch?—A. Yes.

Mr. FEIGENBAUM. We offer that part, column 3, on page 13 of the home edition of the Post-Dispatch, bearing date of October 14, 1920, beginning at the top and ending with the end of the third paragraph, which part alone refers to the candidate in question.

Mr. BARRETT. I object to reading such newspaper article in evidence. In the first place, it is not the best way to prove the action of that meeting. The best way to do that would be to have the secretary or the officers of that organization produce their records and read from their minutes. And there is no assurance that this newspaper article is correct. I also object to it because it does not support or tend to support any issue raised by the contestant in his notice of contest, and because it does not tend to prove or disprove any issue raised by the contestee in his answer, and because the contestee has already served notice on the contestant that he will not take any testimony. Is this newspaper article of the action of the Friends of Irish Freedom at the Odeon on October 13, 1920, offered in rebuttal of contestee's answer?

Mr. FEIGENBAUM. There is nothing for rebuttal at this time. We offer this as our direct case, as that phase of the case which may be known as rebuttal has not yet been reached. We offer this as part of our testimony in chief, and nothing more.

Maj. HAWES. I desire to object to the introduction of any newspaper articles, or any matters whatsoever that are not contained in the notice to contestee

The various charges are set out, I believe, in 27 different counts, and this is not in proof of any one of those counts, which all relate exclusively to election irregularities, and it is not evidence unless introduced in rebuttal or in answer to the answer filed by contestee to notice of contest.

Mr. BARRETT. If you are going to introduce it at all, I will insist on the whole of it.

Mr. FEIGENBAUM. You may insist on the rest of it if you want to; that is up to you.

Mr. BARRETT. It don't make a bit of difference, but you can't offer part of it.

Mr. FEIGENBAUM. I may make any offer I see fit, and you can make your request.

Mr. BARRETT. I know, but you can't offer part of an article unless you read all of it.

Mr. FEIGENBAUM. I have just pointed out that part of the article that refers to the candidate in question; but if counsel for contestee insists or claims that the balance of of it, the balance of such article, has any bearing on the issues I will be glad to read all of it in; and now I ask you to read the article as a whole.

Mr. BARRETT. I make the further objection that there is nothing in that article to show that any action was taken at that meeting indorsing Mr. Bogy, or any other candidate. That was just simply an announcement made by the chairman of that meeting, and no vote was taken at that meeting.

Said Exhibit I, offered in evidence by the contestant, is, in words and figures, as follows, to wit:

CONTESTANT'S EXHIBIT I.

OPPOSITION TO LEAGUE CANDIDATES PLEDGED BY IRISH.

Support of Spencer, L. C. Dyer, and Bogy voted at joint session with America-first body at Odeon.

NO CHOICE IN TENTH DISTRICT.

Answers of candidates to questionnaire of Friends of Irish Freedom are read at meeting.

At a joint meeting of the Friends of Irish Freedom and the America-First League at the Odeon last night the greater portion of a gathering that filled the lower floor and part of the balcony of the Odeon, which has a seating capacity of about 1,900, pledged support to the Republican national and State tickets, promised to vote against Breckenridge Long, Democratic candidate for Senator from Missouri, and adopted resolutions condemning the League of Nations, praising Senator James A Reed, and demanding that the United States recognize the Irish republic and call the outstanding British loans.

Dr. R. Emmet Kane, a member of the executive committee of the Friends of Irish Freedom, presided. He announced that all of the resolutions offered had been approved by this committee and that the committee also had decided to recommend that Irish voters should vote against Cox and Roosevelt, against the Democratic State ticket, and against Long.

He also read the answers received by the Friends of Irish Freedom to the questionnaire recently sent out to St. Louis and Missouri candidates asking them how they stood on the Irish question and the League of Nations. On the basis of these answers, he said, the organization had decided to indorse Selden P. Spencer, Republican, for Senator; L. C. Dyer, Republican, for Congress from the twelfth district; and Bernard P. Bogy, Republican, for Congress from the eleventh district.

NO CHOICE IN THIRD.

No choice was made as between Cleveland A. Newton, Democrat, and A. Evans Hughes, Republican, in the tenth congressional district. Indorsements were given only to those whose replies to the questionnaire specifically stated, as Dr. Kane put it, that they were "for Ireland and against the League of Nations."

Congressional candidates outside of St. Louis, all Republicans, who were indorsed are T. W. Hukriede, ninth district; Marion E. Rhodes, thirteenth district, and C. L. Faust, fourth district.

In explaining the indorsements Dr. Kane said: "There should be no quarrel with us, because we served notice on the Democratic State committee and the State convention that if they indorsed the League of Nations and attempted to kick Senator Jim Reed out of the party, we would leave the party. We told them that if they wanted the League of Nations and did not want the Irish vote they could have their wish in that respect."

The meeting was opened with an invocation by Monsignor J. J. Tanrath, chancellor of the Catholic archdiocese in St. Louis, who closed with a prayer for the preservation of the United States "with no alliance to protect it and no covenant to restrain it."

REFERENCE TO PRESIDENT.

In his opening address Dr. Kane referred to President Wilson, who he said, "went to Paris and left God on this side of the ocean." In other speeches at the meeting there were references to the President, all of them uncomplimentary and some of them bitter, ironical.

Joseph Scott, a Los Angeles (Calif.) attorney, who described himself as a close political friend of Senator Hiram Johnson, devoted the greater part of a long speech to a sarcastic description of President Wilson's visit to Europe, picturing him as a "sucker" who was "trimmed" in the power game of international politics.

Scott dealt at length on the President's visit to England, describing the luxury of his reception by the King and Queen who, he said, fed the President with a table setting of gold plate and gave up the royal bedchamber for him. He made it appear that the President was made a victim of the political and diplomatic trickery of Lloyd-George. Every uncomplimentary reference to Great Britain was loudly cheered.

REFERS TO COX'S PLEDGE.

In reference to the pledge given by Gov. Cox at last Monday night's meeting in the Coliseum that if elected President he would bring the Irish question to the attention of the League of Nations, Scott said:

"I am Hiram Johnson's political friend. Senator Johnson has insisted that the League of Nations, as the paramount question of the campaign should be left to the referendum of the ballot box. He knows that if Cox is elected it will be a sign that the people want the League of Nations. In that event Johnson must vote for the league in the Senate or give up his seat.

"I know Cox has said that if he is elected he is going to refer the Irish question to the League of Nations. The best answer to that was given to Cox when he made the same statement out in Butte, Mont. And when he said he was going to put the Irish question before the league a rough-spoken miner in the audience shouted: 'The hell you are.'"

Patrick H. O'Donnell, of Chicago, the other speaker, also made a reference to Cox's pledge.

"Gov. Cox," he said, "has told us that if elected President it will be his first high duty and great pleasure to take Ireland's cause before the League of Nations under article 11 of the covenant. Fifty years ago when the Irish who had come over here as immigrants were ignorant that statement might have had some effect. But I tell Cox that long before he entered the field the Irish people had risen up and denounced the League of Nations as unfit for free people.

"The man who thinks he's fooling the Irish is fooling himself. Cox can't fool any Irishman. Cox will take the Irish question before the League of Nations. Yes, he will—when he is President."

O'Donnell drew applause when he referred to the covenant as "the infamous League of Nations brought home by President Wilson on his hip," and when referring to the 14 points he said "it looked as if Wilson were trying to take down the rooster and put up the porcupine as the Democratic emblem."

ANTI-LEAGUE RESOLUTION.

The anti-League of Nations and anti-Democratic resolution adopted was as follows:

"Whereas the League of Nations is un-American, surrendering our sovereignty and leaguing us with Governments which are antagonistic to the spirit of liberty and justice, one of whom, England, the dominant factor, is even at this moment shooting unarmed Irishmen, women, and children, looting their homes, burning their factories, and destroying every industry that sustains Irish life: Therefore, be it

"*Resolved*, That we, citizens of St. Louis in mass meeting assembled, emphatically and unequivocally condemn the League of Nations and the party that sponsors it, and call on all Americans who love the Republic of Washington and Jefferson and Lincoln and Roosevelt better than the League of Nations of Woodrow Wilson to vote against the Democratic Party in the coming election."

In putting this resolution to a vote Dr. Kane said: "All in favor will say 'aye.'" After an unmistakably affirmative response Dr. Kane said: "Now all opposed will say, 'I prefer Great Britain.'" Nobody cared to say that and it was announced that the resolution was unanimously carried. There was no question that it received a great majority vote.

DEMAND FOR RECOGNITION.

The resolution calling on the United States to recognize the Irish Republic and call the English loan was as follows:

"Whereas Terence McSwiney, lord mayor of Cork, is the embodiment of all the principles for which Americans at least were led to believe the World War was fought, and

"Whereas this great patriot and 11 of his colleagues are now suffering the greatest torture to man, in protest against the failure of the British Government to apply those principles in the case of Ireland.

"*Resolved, therefore*, In order that the sacrifices made by the Irish on every battlefield of the war and being made by the Irish in their homes and in British prisons to-day to make the world safe for democracy be not in vain, we demand that our Government recognize the Irish Republic and call the English loans which make it possible for the British Government to maintain its army of occupation in Ireland; and be it further

"*Resolved*, That we call on the American Red Cross to extend at once its aid to the homeless, suffering, starving people of Ireland, even as it did to those in Belgium, in France, and in Poland, who gave up everything in order that liberty might live."

RESOLUTION PRAISING REED.

The resolution praising Senator Reed was as follows:

"Whereas Senator James A. Reed, who loves his country better than his party, has fearlessly and unflinchingly fought the League of Nations and stands for the Constitution of the United States, inviolate and unabridged: Be it

"*Resolved*, That we citizens of St. Louis, irrespective of political belief, indorse the conduct of the senior Senator of Missouri and commend him for the noble fight he has made to preserve American independence."

In the early stage of the meeting, before the resolutions were introduced, Dr. Kane called for a rising vote on the question of indorsing the national and State Republican tickets. Practically all in the hall rose to signify their approval of the indorsement. Six men who rose when the negative vote was called for were hissed and they quickly sat down.

Mr. FEIGENBAUM. Mr. Bogy, did you file a statement of your expenses in the campaign?

A. I did.

Q. For the seat of Congressman from the eleventh congressional district?—A. I did.

Q. I ask you to look at this statement, or what purports to be a certified copy of a statement filed in the recorder of deeds office of the city of St. Louis, and ask you what that is?—A. That is a form of candidate's sworn statement.

Mr. FEIGENBAUM. I ask that that be marked "Exhibit J," that it be made a part of the record, and if there is no objection by contestee, that it may be copied into the record and considered a part thereof.

Maj. HAWES. What is that, a copy of my returns?

Mr. FEIGENBAUM. Yes; a certified copy.

Maj. HAWES. There is no objection to that.

Said Exhibit J offered in evidence by the contestant is in words and figures as follows, to wit:

CONTESTANT'S EXHIBIT J.

FORM 57.

Form of candidate's sworn statement to be filed within 30 days after the election in compliance with section 6047 of the Revised Statutes of 1909:

ST. LOUIS, MO., *November 17, 1920.*

STATE OF MISSOURI,
City of St. Louis, ss.

I, Harry B. Hawes, having been a candidate for the office of Representative in Congress at the election held in the city of St. Louis, in the State of Missouri, on the 2d day of November, 1920, being duly sworn, declare under oath that the following is a just and true sworn statement in detail, of all sums of money (except all sums paid for actual traveling expenses, including hotel or lodging bills), contributed, disbursed, expended, or promised by me, and to the best of my knowledge and belief, by any other person or persons in my behalf, wholly or in part, in endeavoring to secure, or in any way in connection with my nomination or election to said office or place or, in connection with the election of any other persons at said election, and showing the dates and the persons to whom and the purposes for which all such sums were paid, expended, or promised, and that the same is as full and explicit as I am able to make it, as follows, to wit:

Items of expense:	Amount.
Cox-Roosevelt-Long-Atkinson Club	$25.00
Democratic fair day, twenty-sixth and twenty-seventh wards	50.00
Tickets, Democratic dances and euchres	17.00
General Democratic committees, eleventh congressional district	500.00

Subscribed and sworn to before me by said affiant at St. Louis, Mo., this 17th day of November, 1920.

Witness my hand and official seal the day and year above written.

[SEAL.] JOHN A. BURKE, *Notary Public.*

My commission expires January 13, 1922.

Filed November 19, 1920, at 2.52 p. m.

CHAS. F. JOY, *Recorder.*

STATE OF MISSOURI,
City of St. Louis, ss:

I, the undersigned recorder of deeds for said city and State, do hereby certify the foregoing to be a true copy of sworn statement of Harry B. Hawes together with the date and filing thereof as the same remains in my custody.

Witness my hand and official seal this January 24, 1921.

CHAS. F. JOY, *Recorder.*

Mr. FEIGENBAUM. I show you this certified copy of a statement by one F. W. Fordyce as treasurer of the general Democratic committee of the eleventh congressional district of the city of St. Louis, Mo., and ask you whether that is a certified copy obtained from the recorder of deeds, office of the city of St. Louis?

A. Yes.

Mr. FEIGENBAUM. I ask that that be marked "Exhibit K" and now offer it in evidence as part of this deposition.

Mr. BARRETT. I object to this certified copy of statement of receipts and expenditures made by F. W. Fordyce, for the reason that it appears upon its face to be a statement of receipts and expenditures of a general Democratic committee of the eleventh congressional district organized to assist the election of the national, State, and city ticket, and makes no reference to the election of any candidate for Congress, and particularly makes no reference to the election, or assisting in the election of the contestee to Congress, and that contestee, as a member of the Democratic Party, running for office at that election, received the same benefit that all other candidates on the ticket received, and there is no means of determining what portion of expenditures were expended in behalf of contestee, if any funds were expended in his behalf; and the certified copy heretofore referred to is wholly incompetent, irrelevant, and immaterial, and does not prove or tend to prove the allegation in contestant's notice that contestee exceeded his expenditures as allowed by law, or any person or persons in his behalf expended sums for him with his knowledge or consent in excess of the amount allowed by law; and for the further reason that said statement of receipts and expenditures does not appear to have been moneys received or expended in behalf of contestee, or with his knowledge or consent, for the purpose of procuring his election to the office of Congressman from the eleventh district.

Mr. FEIGENBAUM. The purpose of the introduction of this exhibit at the present time will be made clear from the next few questions and answers connecting such exhibit with contestee's campaign.

Mr. BARRETT. I object to it further, because there has been no evidence introduced in this case thus far to show that any of the moneys referred to in said statement signed by F. W. Fordyce were expended in behalf of contestee at the election of November 2, 1920.

Said Exhibit K offered in evidence by the contestant is in words and figures as follows, to wit:

CONTESTANT'S EXHIBIT K.

RECEIPTS AND EXPENDITURES.

General Democratic committee, eleventh district of Missouri, consisting of 155 voting precincts in wards 2, 3 4, 18, 19, 20, 22, 26, and 27, and advisory committee of eleventh district committee organized to assist in election of Democratic National, State, and city candidates at election held November 2, 1920.

This latter committee was composed of two men and one woman member from each ward, and the following persons were officers: William L. Igoe, chairman; John J. Cochran, secretary; and Samuel Fordyce, treasurer.

Receipts.

Samuel Fordyce	$1,000	G. W. Simmons	$25
Rolla Wells	200	J. O. Ballard	25
B. F. Bush	50	S. H. Fullerton	100
Hugo Koehler	100	P. J. McMorrow	100
Benjamin Gratz	100	Thomas J. Sheehan	50
Daniel G. Taylor	250	C. W. Johnson	100
Russell E. Gardner	250	L. Cook	100
A. C. Stuever	200	J. W. Newell	50
August A. Busch	250	J. L. Davis	25
Bruce Starke	300	A. B. Lambert	50
Eugene Angert	25	J. W. Fristoe	25
Arthur Donnelly	100	Martin Shaughnessy	50
William B. Dean	50	H. S. Priest	100
Thomas B. Harvey	25	Murray Carleton	100
J. E. Smith	50	J. W. Folk	150
James Nelson	25	W. O. Schock	50
Samuel Lazarus	250	E. J. White	50
J. C. Harvey	150	W. A. Gardner	50
L. E. Dennig	100	J. W. Thompson	100
W. J. Lemp	50	Charles Clark	25
C. N. Jones	100	P. C. Scanlan	10
Frederick Gardner	250	J. J. Cochran	25
D. B. Hussey	50	William L. Igoe	400
A. Busch 3d	100	Edw. Daly	25
Charles W. Bates	50	Harry B. Hawes	500
S. E. Edmunds	100	Shepard Barclay	10
G. H. Walker	500	Katie A. Barclay	10
G. J. Tansey	20	T. M. Jenkins	100
Jesse McDonald	35	T. W. White	250
M. N. Sale	25	W. H. Woodward	150
Louis and J. M. Nelson	25	B. C. Clark	200
Con P. Curran	100	Ignatius W. Powell	50
M. Schoenberg	250	J. E. Carroll	50
G. B. O'Reilly	10	Colin M. Selph	50
Ralph W. Coale	100	C. R. Sutter	50
John Lonsdale	100	James Kennedy	15
R. S. Conlon	100	T. H. Wright	125
J. F. Lee	150		
A. J. Siegel	100	Total	9,135
J. F. Queeny	100		

Expenditures.

Registration, Sept. 13, 14, 15, 16, 1920, precinct organizations, 155 precincts, at $10	$1,550.00
Election, Nov. 2, 1920, precinct organization, 155 precincts, at $10	1,550.00
Ward committee, 9 wards, at $100	900.00
Automobiles election day, 9 wards, at $25	225.00
Meetings, rent, speakers' expense, etc	775.69
Newspaper advertising	180.00
Headquarters, chairs, telephones, rent, light, etc	345.25
Printing	986.00
Distribution literature, stamps, clerks, stenographer, mailing, etc	2,604.30
Balance sent to State Democratic committee	18.76
Total	9 135.00

STATE OF MISSOURI, *City of St. Louis, ss:*

On this 30th day of November, 1920, personally appeared before me S. W. Fordyce, who, by me being first duly sworn on his own oath, did state that he is treasurer of the general Democratic committee of the eleventh district of the State of Missouri, and that the above statement of receipts and expenditures of said committee is to the best of his knowledge and belief correct and true, and further affiant saith not.

S. W. FORDYCE.

Subscribed and sworn to before me, a notary public within and for the city of St. Louis, State of Missouri, this 30th day of November, 1920.

[SEAL.]

MADELEINE G. KELLY,
Notary Public.

My commission expires July 13, 1924.

Filed November 30, 1920, at 4.21 p. m.

CHAS. F. JOY,
Recorder.

STATE OF MISSOURI, *City of St. Louis, ss:*

I, the undersigned recorder of deeds for said city and State, do hereby certify the foregoing to be a true copy of a sworn statement by S. W. Fordyce as treasurer of the general Democratic committee of the eleventh district of the State of Missouri, together with the date and filing thereof, as the same remains in my custody.

Witness my hand and official seal this 24th day of January, A. D. 1921.

CHAS. F. JOY,
Recorder.

Mr. FEIGENBAUM. Mr. Bogy, do you know what the general Democratic committee of the eleventh district of Missouri was on and prior to November 2, 1920?

A. No; I do not.

Q. Do you know who was the chairman of that committee?—A. I believe it was Mr. Fordyce; I am not sure.

Q. Chairman I am referring to, not treasurer?—A. Oh, Mr. Igoe, whose name is on the Hawes signs, banners, etc.

Q. Is that Congressman William L. Igoe?—A. Yes, sir.

Q. Do you know whether or not the general Democratic committee has any headquarters in the eleventh district?—A. I do not know of the general Democratic committee; I know that the Hawes club, as it was called, the "Hawes for Congress Club," had headquarters at two places.

Mr. BARRETT. I object to that answer because not responsive to the question. The question relates to the general Democratic committee, and not anything about any Hawes club, and that is the first time I have heard anything about a Hawes club, and I move that the answer to the question be stricken out.

Mr. FEIGENBAUM. Do you know of a Democratic headquarters situated in the eleventh congressional district at the corner of Grand and Easton?

A. I do.

Q. Tell us what headquarters that was?—A. It was on the northwest corner of Grand and Easton, and the sign on the outside, to the best of my recollection, said, "Hawes for Congress headquarters, William L. Igoe, president."

Mr. Barrett. I am going to object to this line of testimony and ask that it be stricken out, because the witness in this case is the contestant and is trying to make a self-serving answer. His answer is self-serving. It ought to have been testified to by some other witness or a photograph of it taken. At this late hour, 8.35 p. m. of the last day——

Mr. Feigenbaum. Of contestant's time.

Mr. Barrett. Yes; of contestant's time.

Mr. Feigenbaum. Did you see any other sign of any character on that headquarters you have just described?

A. I only noticed one large sign.

Q. No others?—A. I can not recall any others at the present time.

Q. Was the chairman noted there, the name of the chairman?—A. Yes; as I stated before.

Q. What was that? I want to get you to state just what was on that window.—A. It was a large sign across the Grand Avenue side. As nearly as I can remember it, it said, "Headquarters Hawes for Congress Club, William L. Igoe, president," if I recollect correctly; that is the best of my recollection.

Q. Did you have any conversation with Maj. Hawes, contestee, regarding the expenditures by the Democratic congressional committee of the eleventh district of St. Louis?

Mr. Barrett. Now, wait a minute. Your questions heretofore have all had reference to a general Democratic committee. Now you are asking about a congressional committee of the eleventh district.

Mr. Feigenbaum. I will adopt that suggestion of counsel.

Q. Did you have any conversation with Maj. Hawes, contestee, regarding any expenditures made by the general Democratic committee of the eleventh district of Missouri? Answer that in your own way.—A. I had a conversation with Maj. Hawes when he told me that he was surprised that even Joe Folk, old-time enemy of his, had contributed $150 to his campaign fund. He mentioned the names of quite a number of others, among them Mr. Wells, Bates, and quite a number of others; and he told me that all the Democratic machinery was concentrated and the money spent to bring about his election in the eleventh congressional district. He seemed to lay particular stress on the fact that the contribution had been very general to help him in that district, and he was particularly surprised and pleased at Joe Folk—Joseph W. Folk, former governor of the State, contributing to his campaign fund. He mentioned the sum, $150.

Q. Mr. Bogy, you were present when testimony was given during this deposition regarding delay in the voting in some precincts, particularly the first precinct of the twentieth ward, were you?—A. Yes'

Q. Do you know whether it was a matter of public record that such delays were occasioned——A. It was.

Mr. Barrett. Wait a minute.

Mr. Feigenbaum. Throughout the city of St. Louis?

Mr. Barrett. I object to that question, first, because it takes in the entire city; and it is not limited to the eleventh congressional district. I also object to it because it is not the way to prove delays, if they were done deliberately, but some witnesses should be produced and not a newspaper article purporting to be——

Mr. Feigenbaum. We have not offered any newspaper article yet.

Mr. Barrett. Or any general knowledge on the part of this witness, unless he knows and was present throughout these various precincts of which he complains; then let him specify the ward and the precinct.

Mr. Feigenbaum. What is your answer?

A. Yes.

Mr. Barrett. And I ask that the answer be stricken out, because it is impossible for this particular witness to have a personal knowledge of a matter of this character.

Mr. Feigenbaum. You stated that you had knowledge of it being brought to the public's attention that such delay was being occasioned; does your knowledge come from reading the newspapers in the city of St. Louis?

Mr. Barrett. I object to that question because it is contradictory of evidence heretofore offered on behalf of the contestant that there was no such delay, and it was limited entirely to one precinct, to wit, the first precinct of the twentieth ward, by witnesses offered by the contestant himself, and this line of testimony is seeking to contradict or impeach the testimony of his own witnesses, for whose veracity he vouches; and, secondly, because newspaper articles of the report of a condition of things is not the way to prove such matter. It ought to be proven by witnesses who were present and saw the disturbances or the improprieties or irregularities, and not by unaccredited and unauthenticated newspaper articles, which is mere hearsay, at the best.

Maj. HAWES. Contestee objects because he is entitled to be confronted by witnesses, who shall be sworn and subject to cross-examination. These newspaper articles are not signed, even the name of the man that wrote them is not given; no opportunity is given to examine this evidence. I object to it as wholly improper.

Mr. FEIGENBAUM. Look at this. I will ask you what this purports to be? I will ask you whether this clipping before you is one from the St. Louis Times, dated Thursday, November 4, 1920?

A. Yes; that is what it is.

Mr. FEIGENBAUM. I will ask that that be marked "Exhibit L" and made a part of this deposition.

Mr. BARRETT. I want to object to this newspaper article for the further reason that it is an article reporting that there were rumors, or that evidence was going to be submitted to a grand jury that there were printed instructions given out by the Democratic committee, or Democrats, to deliberately slow the vote, and there has not been a single, solitary scrap of evidence to substantiate said allegation in this contest up to the present time; and the name of the man who wrote the article is not given; and because it purports to be an interview from Bernard P. Bogy, the contestant in this case.

Maj. HAWES. Let it go in. We are glad to have that go in.

Mr. BARRETT. All right; let it go in.

Maj. HAWES. Leave our objection go in also; don't withdraw our objection.

(Said Exhibit L, offered in evidence by the contestant, is in words and figures as follows, to wit:)

CONTESTANT'S EXHIBIT L.

Evidence of huge plot to slow vote to be given jury—Card given Democrats bears instructions over city chairman's name, for slow balloting in G. O. P. wards—Believed distributed among party watchers—Theory advanced that orders were written under signature of J. J. Mestres by conspirators faking authority—Evidence of widespread Democratic attempts to block the Republican vote Tuesday will be submitted to the October grand jury investigating election and registration frauds under direction of Circuit Judge Moses Hartmann.

Outstanding among the data to be given the jurors is a card declared to be similar to scores distributed among Democratic challengers and watchers in a plot to tie up G. O. P. balloting where it was known to be heavy and where a Democratic majority never could have been obtained fairly.

One side of the card bears printed instructions to registrants over the name of J. J. Mestres, of the seventh ward, chairman of the Democratic city committee.

On the other is scribbled in lead pencil orders to watchers and challengers as follows: "Vote slow in Republican precincts. Get Democratic voters to vote early. Germans and Austrians can not vote on their first papers or their wife's. Considered enemy aliens."

GIVEN DEMOCRATIC VOTERS.

The printed instructions were distributed among supposed Democratic voters just before the registration period September 13, 14, 15, and 16. A blank was left in which the name of the recipient was to be written.

One theory is that a great number of cards were left over after registration and carelessly used as memorandums to Democratic challengers.

Another supposition is that the card was used deliberately by a leader among the plotters to make it appear that the instructions in lead pencil were countenanced by Mestres and backed with his authority as chairman of the city committee.

The discovery of the card capped a long list of complaints of fraud and willful delay made by voters to the board of election commissioners and to Judge Hartmann.

OFFICIALS REPORTED DELAYING.

Telephones buzzed incessantly in the election commissioners' offices Tuesday with complaints of one sort or another. The commissioners were kept busy going to polling places in automobiles to investigate them.

Significant among the reports were those that voting was being held up by the police for hours in several precincts, because Democratic clerks and judges failed to appear when the polls were opened at 6 a. m.

Contrasted with the fact that upon the face of returns to-day, Harry B. Hawes appeared to be the only Democrat elected to Congress from Missouri, was the declaration of his opponent, Bernard P. Bogy (R.)—that he would contest because of fraud.

CHARGES VOTE REPEATERS.

Bogy asserted repeaters circulated an orbit of polling places and that Republican balloting was held up willfully by the deliberate slow work of Democratic poll officials.

He said there would be a meeting of the eleventh congressional district committee either to-morrow or the next day to determine what course Bogy would pursue. He said he had positive knowledge that he had carried one ward in the district by 1,200 votes, although the police returns indicated he had lost it by 189.

Judge Hartmann to-day said he was determined that the jury should go to the bottom of what is regarded as conclusive evidence of registration frauds and such complaint of election thievery as may be brought to his attention.

He called the jurors to meet at 10 a. m. When asked what procedure had been outlined for to-day, Hartmann referred the questioner to Circuit Attorney Lawrence McDaniel.

The circuit attorney sent him to his assistant, Edward F. Feehan, in charge of the grand jury. Feehan directed him back to the judge. Thereafter McDaniel and Hartmann went into conference.

It was announced after the parley that by agreement between Hartmann and McDaniel the grand jury would continue its investigation Monday morning.

McDaniel was defeated Tuesday for reelection by Howard Sidener, Republican.

GERMAN NOT DENIED VOTE.

The scribbled notice on the Mestres card violates election board orders in so far as it applies to Germans and Austrians. The ruling was made recently and brought into prominence Tuesday when John Glaser, 6418 Michigan Avenue, reported to the board that he had been refused a ballot.

Glaser said he had been a resident of America five years and had his first naturalization papers. Glendy B. Arnold had ruled that holders of first papers might vote. Glaser was sent back to his polling place and told to inform the judges they must read their instructions which makes this point clear.

Complaints were made that judges and clerks of the poll at 4600 Olive Street were opening the ballots and not placing them in the boxes unless the voter insisted.

A woman reported that when she appeared at the polling place at 3110 Easton Avenue she was handed only a Democratic ballot. She asserted she was compelled to ask twice for a Republican ticket before it was given to her.

The first precinct, twentieth ward, Democratic judges were declared to be challenging every Negro voter. In the tenth precinct of the seventeenth ward it was asserted only one ballot was being given to each voter in the polling place at 3127 Locust Street.

Gabe Roth, Republican committeeman from the fifth ward, said in the eleventh precinct, 1527 Olive Street, the Democratic judge swore in a Democrat as a substitute because the Republican judge was a little late in reporting.

Anthony Schuler, Republican city committeeman, reported attempts at repeating on Walnut, Fourth, and Fourteenth Streets.

Mr. FEIGENBAUM. Mr. Bogy, in your notice of contest you gave a long list of names of persons registering in the fourth ward who were not legally qualified to register. I will ask you whether you obtained this list of names personally?—A. I did not.

Q. Will you tell us who inserted this list of names, or where it was obtained, if you know?—A. George B. Webster——

Mr. BARRETT. Wait a minute. I object to it if he has no personal knowledge of it.

Mr. FEIGENBAUM. Oh, yes; I want to show his good faith in this thing.

Mr. BARRETT. I don't care whether it is good faith or not. I object to you referring to it. You have not offered any evidence to substantiate the allegation, and if contestant himself has no personal knowledge of it I don't care how he obtained it; I object to his trying to testify for somebody who should be sworn and placed on the witness stand and afford us an opportunity to cross-examine him.

Mr. FEIGENBAUM. Read the question.

(Last question and answer read as follows: "Question: Will you tell us who inserted this list of names, or where it was obtained, if you know? Answer: George B. Webster——")

A. George B. Webster, who was my attorney at that time, inserted these names, and he told me according to the best of my recollection——

Mr. BARRETT. This is going rampant on the worst form of hearsay testimony.

Mr. FEIGENBAUM. Not in this instance it is not hearsay.

Mr. BARRETT. I object to the question and the answer of the witness, because it is pure hearsay testimony, of what someone—George B. Webster—told him, who has not been sworn in this case and an opportunity afforded to cross-examine him; and testimony of this character is pure hearsay.

Mr. FEIGENBAUM. Now, let him finish his answer.

The WITNESS. I am only able to state what happened. Mr. Webster spoke of a long list of names that he had that he was going to put in, and he said, "Those alone, I believe, will enable us to throw out the fourth ward, in which event you would be elected." But I did not see him get the names from anyone. I know he inserted them there, or had his stenographer do it.

Mr. BARRETT. I move the entire answer be stricken out as being purely hearsay and incompetent.

Mr. FEIGENBAUM. Mr. Bogy, was a recount in this contest conducted by the election commissioners of St. Louis?

A. It was.

Q. Will you state at what time and day the first conference took place in the office of the election commissioners of St. Louis regarding the manner in which such recount was to be conducted?—A. The 11th of January.

Mr. BARRETT. I object to that question and move the answer be stricken out, because it is immaterial. He had 40 days in which to present all his evidence and have a recount if he desired, and it is immaterial when he went there.

Mr. FEIGENBAUM. At what time of the day?

A. I believe at about 10 o'clock in the morning.

Q. Was any stipulation dictated of this matter by any member of the board of election commissioners?—A. It was.

Q. I show you a copy of a stipulation already in the record of the minutes of the board of election commissioners of St. Louis and ask you whether that is a copy of such stipulation?—A. I believe that is a copy of it.

Q. Was that the original stipulation first dictated on the morning of the 11th?

Mr. BARRETT. I want to object to this, as this has already been gone into by a witness placed upon the stand by contestant himself.

A. I believe it was.

Mr. FEIGENBAUM. Was any discussion had at that time as to the understanding of yourself or contestee of what records would be kept under this stipulation?

A. There was.

Mr. BARRETT. I object to that as an attempt to vary or contradict the terms of an agreement that was reduced to writing and entered into between contestant and contestee.

Mr. FEIGENBAUM. Will you state what, if anything, was said by yourself or contestee, or any member of the board, as to what would be done under this stipulation in the course of the conduct of the recount?

Mr. BARRETT. I object to that question for the same reason. I object to that question because it is an attempt on the part of contestant to vary the terms of a written agreement, which was signed by himself, contestee, and their respective counsel, and because it embodied all that either of the parties desired, being fully discussed, and their agreements and understandings reduced to writing, and because the contestant has asked for and introduced in this record certified copies of the stipulation that was filed with the board of election commissioners, signed by himself, and the minutes of the board, which contained this stipulation, and all matters pertaining to the recount.

Mr. FEIGENBAUM. Go ahead, now.

The WITNESS. Read the question, please.

(Last question read as follows: "Q. Will you state what, if anything, was said by yourself or contestee, or any member of the board, as to what could be done under this stipulation in the course of the conduct of the recount?")

A. Yes. I remember it distinctly.

Q. State the entire conversation.—A. At the signing of this stipulation I made the statement that I particularly wanted a careful record kept of all the scratched ballots, as I wished to have the opportunity of making photographs, believing that a great many ballots had been fraudulently scratched. My attorney, Mr. Cornelius F. Bauer, also spoke along those lines, and it was agreed a record would be kept of all of the scratched ballots, and photographic copies could be had. Judge Arnold, as nearly as I can remember, related these words: He said, "In the space"——

Mr. BARRETT. Now, wait a minute. Now, I object to this line of testimony, because it is an attempt on the part of the witness to contradict the testimony, or impeach the testimony of Judge Arnold, who was placed upon the stand as his own witness, and it is an attempt to impeach the veracity of his own witness, and Arnold was called as a witness and testified fully as to all these matters. And because contestant did not, during the examination of Judge Arnold, lay any foundation for the purpose of impeaching him, and this is in effect an impeachment of Judge Arnold's testimony, who was his own witness, placed upon the stand by him.

Mr. FEIGENBAUM. What was the last he said, so he can continue?

(Last sentence of last answer read, as follows: "Judge Arnold, as nearly as I can remember, related these words: He said, 'In the space'——")

A. In the space to the right of the contestant's name, the first space at the top, will be put the total number of straight Republican votes that he received, then the scratched votes that he received from the other parties. Opposite the name of the contestee will be put, first, the straight Democratic ballots, then the Republican scratched ballots, Socialist scratched ballots, and the ballots of other parties that may have been scratched in his favor.

Q. Was there anything said by Judge Arnold regarding the——

Maj. HAWES. I object to this answer and ask that it be stricken out, because the form just read by contestant is a matter of record in these proceedings, and he is trying now to vary an agreement reduced to writing by oral testimony, and for the further reason that he is now trying to contradict a memorandum agreed to by both parties and used in the recount in each of the 155 precincts.

Mr. FEIGENBAUM. Was anything said, Mr. Bogy, by Judge Arnold, or any other member of the board as to what right would be afforded to you or contestee to photograph any scratched ballots?

A. They said we could have them all protographed if we wished.

Maj. HAWES. I object to this statement because it is contrary to the record in the case, as the record shows that contestant at no time asked for the photographing of any ballots, excepting in the precinct contained in the memorandum of exhibits enumerated in the records of the board. Those precincts are ward 19, precinct 12; ward 26, precinct 22; ward 26, precinct 17; ward 20, precinct 14, ward 22, precinct 8; ward 22, precinct 9.

Mr. BARRETT. And because it is an attempt to impeach his own witness without laying a proper foundation for impeachment, or showing that he himself was a hostile witness.

Mr. FEIGENBAUM. Mr. Bogy, were these statements made by Judge Arnold and the statements of yourself and Mr. Bauer representing you made at the time this stipulation was signed?

A. Yes, sir.

Mr. Barrett. Just a minute. Also as an additional reason, I object to this witness testifying to anything Mr. Bauer may have said. He was counsel for contestant; he was not sworn, and we were not given an opportunity to cross-examine him.

Mr. Feigenbaum. What time was the recount undertaken, how long after the signing of this stipulation and the conversation which you have just related?

A. The recount started, I believe, shortly after 11 o'clock on Wednesday morning, the 12th of this month, 12th of January.

Q. And when was this signed, this stipulation?—A. I believe it was signed on January 11.

Q. That was the day prior to the commencement of the recount?—A. I think so.

Q. That is the best of your recollection?—A. That is the best of my recollection.

Q. But you are positive about the conversation you have just related as having taken place at the time of the signing of this stipulation?—A. Absolutely.

Q. Were any announcements made during the progress of this recount by any of the election commissioners changing this understanding had between yourself, contestee, and the election commissioners, which you have just outlined, at the time this stipulation was signed?—A. Yes.

Mr. Barrett. Wait a minute. I object to this question because it is based upon the assumption that there was an understanding other than that which was agreed to in the stipulation, and for the further reason that it is an attempt to impeach the testimony given by Commissioner Arnold and Commissioner Buder, and the secretary of the board, who were placed upon the witness stand by contestant, and it is an attempt on the part of the contestant to impeach his own witnesses, and he has not laid the foundation for impeachment, nor has he shown that any one or all of these witnesses were hostile to him; and I move that the answer be stricken out for the reason assigned.

Mr. Feigenbaum. When and by whom were such latter instructions given?

Mr. Barrett. I object to that question for the reasons outlined to the previous question.

A. Well, they were given by Commissioner Dempsey on one occasion at the table where a man named Harrison was sitting and a man named Hartmann. Hartmann, who was a watcher for me, had been taking some numbers of some scratched ballots. Mr. Dempsey went to the table, and he says: "I want it thoroughly understood that you can make no notes of any ballots." He said, "You must take no memorandums whatsoever of scratched ballots, and if you do you will be excluded from the room." On another occasion, I believe it was Friday morning about 10.30 o'clock——

Mr. Barrett. Give the time of the first one.

The Witness. The first time, I believe—I think it was on Thursday; it might have been Wednesday night, but it was in the evening, I judge around about 8 o'clock, that he went to the table where Harrison and Hartmann were seated. And, anyhow, it was the next morning after that first occurrence that he went into the large room in which were nine tables, all occupied by the different clerks who were making the recount and watchers, and he rapped loudly upon one of the tables to call their attention. He said, "I want it understood by the clerks and by the watchers in this recount that the clerks here are simply to recount the ballots as cast, and neither the clerks or the watchers must take any notations of any of the ballots, scratched or otherwise."

Mr. Feigenbaum. Now, what statement, if any, did you make following Mr. Dempsey's statement you have just related?

A. I made a statement in a loud tone of voice, so that all could hear me perfectly, in which I said that my chief object in having the ballot boxes opened was to have a careful note taken of all the scratched ballots and photographs taken of all those that showed evidence of fraud, because I had announced that that was where I expected the fraud would be found; that all I wanted was a square deal, and if I wasn't getting it in the recount conducted under the auspices of the election commissioners I would get it through Congress.

Q. Was any further instruction or order given by Commissioner Dempsey thereafter at any table in the office?

Mr. Barrett. I object to this, for the same reason, and for the further reason that Dempsey could have testified to this, and the best way to prove what Commissioner Dempsey stated was to place him on the stand, and he was subpœnaed and sworn and could have testified in this case, and was present in answer to a subpœna on several occasions—three occasions—or at every meeting of the board and throughout the entire recount, and that contestant refused to permit him to take the stand, although Commissioner Dempsey had requested contestant, in writing, to afford him an opportunity to state just exactly what he did say, and there was no reason for contestant to refuse or deny such a request to a witness that he had subpœnaed and sworn, on the ground that he was hostile to him, because if he was hostile to him he could have cross-examined him, and it does not appear that he was hostile to him. And also because Commissioner Arnold, in his testimony, stated that such instructions as were given by Commissioner Dempsey as under the authority of the board and in accordance with the stipulation signed by the parties, and that they were approved by the board. And that the board, upon the refusal of contestant to permit Mr. Dempsey to be sworn and make a statement, subject to the right of cross-examination on the part of contestant, on motion of Commissioner Buder, seconded by Commissioner Lammert, Commissioner Dempsey's statement was incorporated in the minutes of the board because of said refusal and are part of the proceedings of the testimony taken in this case by contestant.

A. Well, I will mention one instance. It was the table at which Mr. Bemish was sitting, the south table in the whole office, the small office, the small part of the hall. There was some dispute going on about the validity of some ballots, and I was standing about, I should judge, 25 or 30 feet away. I was standing at the table at which Mr. Harrison was one of the clerks. Mr. Dempsey went over to the south table——

Mr. Barrett. Now, which table are you speaking about? The table Bemish was at was table No. 11.

A. I think it was table No. 12.

Mr. Feigenbaum. No; it was No. 11. It was Bemish's table; anyway it doesn't matter. Go ahead.

A. And I heard him say, "I want you to understand you are simply here to count the ballots as cast." The reply was made to him, "Well, these look fraudulent." Mr. Dempsey replied, "It is none of your damn business how much fraud there is. It is your place to count the ballots as cast, and if you are the cause of any delay at this table you will be looking for another job within an hour."

Q. Mr. Bogy, after the first statement that you have outlined of Mr. Dempsey's wherein, as you say, he stated that judges or clerks or watchers should keep no tab or memoranda of scratched ballots, were you keeping any record, or were you permitted to keep any record of scratched ballots?

Mr. Barrett. I object to this question for the further reason that it is contradictory of a number of witnesses who were placed on the stand by contestant, who stated or testified that Commissioner Dempsey announced that they were to take a record of only such ballots as were in dispute, and a record was made by the recount clerk, and if the contestant or any of his counsel desired to consult any ballots they might do so, and a record thereof might be made, including the ones desired to be photographed; and particularly, because it is contradictory of the testimony offered by the witness, Mrs. Caulfield.

Mr. Feigenbaum. Go ahead and answer the question.

The Witness. I have forgotten the question now.

(Last question read as follows: "Mr. Bogy, after the first statement that you have outlined of Mr. Dempsey's wherein, as you say, he stated that judges or clerks or watchers should keep no tab or memoranda of scratched ballots, were you keeping any record, or were you permitted to keep any record of scratched ballots?")

A. I was not permitted to.

Q. Mr. Bogy, did you ever complain to the board of election commissioners, or any of the commissioners, of your inability or the inability of your watchers to carefully examine the ballots or to be permitted to keep tab of scratched ballots?—A. After one of my watchers, a man, I believe, Mr. McCluskey, who was at table No. 13, I think, he came to me just after they had completed some certain precincts—I do not recall what precinct it was at all, but he said, "Mr. Bogy, that precinct looks awfully bad"——

Mr. Barrett. I object to this witness testifying to what Mr. McCluskey said.

Maj. Hawes. Unless the matter was called to the attention of the board.

Mr. Feigenbaum. That is just what I asked him.

Mr. Barrett. I object to him testifying what McCluskey said. McCluskey testified here, and we have his testimony in the record. Let him tell what he did.

Mr. Feigenbaum. Go ahead.

The WITNESS. Mr. McCluskey told me——

Mr. BARRETT. Don't tell us what he told you.

Mr. FEIGENBAUM. Don't tell us what he told you after this complaint: go ahead.

The WITNESS. It is impossible to answer the question unless I can explain it.

Mr. FEIGENBAUM. Go ahead and answer it in your own way.

Mr. BARRETT. I am going to object to this witness testifying for McCluskey, who has already been sworn and has testified.

The WITNESS. I am not testifying for McCluskey. My attention was called to the fact that there were about 100 ballots that to him appeared to be fraudulent.

Mr. BARRETT. I object to that testimony, because McCluskey made no such statement in his testimony given in this case.

Mr. FEIGENBAUM. He didn't say that anybody said that. He said his attention was called to it.

Mr. BARRETT. He just now said McCluskey said there was 100, and McCluskey did not testify to any such thing.

Mr. FEIGENBAUM. Go ahead with your answer.

The WITNESS. I would suggest that Mr. Barrett will allow me to answer, and if there is anything improper in the way I answer it let him object to it afterwards. But it is impossible to answer if every time I open my mouth he interrupts and makes a long statement.

Mr. FEIGENBAUM. Proceed with your answer. Go ahead.

The WITNESS. There was a certain box that was at a table at which Mr. McCluskey was my watcher. After the completion of the recount of that certain precinct and before the box was sealed I requested of Mr. Dempsey, who was the only commissioner in the office at that time, that the ballots be taken out again and counted over, or at least the scratched ballots, and he refused. After the box was sealed I again requested that an examination of those scratched ballots be permitted, and I could obtain no such permission.

Q. Mr. Bogy, did you see any ballots on any other tables, or groups of ballots contained in any one precinct box wherein your name or the name of some other candidate for the office of Congressman from the eleventh congressional district, other than that of Harry B. Hawes, was scratched and the name Harry B. Hawes inserted, which name Harry B. Hawes appeared to have been inserted in the same or similar handwriting?—A. You mean on the different ballots?

Q. Yes.—A. Yes.

Q. Did you undertake to make note of the numbers of such ballots?

Mr. BARRETT. Wait a minute.

A. I did. I asked to see them.

Mr. BARRETT. Now, just a minute. I move to strike the answer out, and I object to the question as leading and suggestive, and I again warn counsel that he has done this repeatedly, and I request him to please not do it any more.

Mr. FEIGENBAUM. Did you undertake to make note of any of such scratched ballots?

Mr. BARRETT. I object to that, because it is leading and suggestive.

A. There was an occasion when some one told me that at—I think you would call it table No. 9, the one at which Mr. Hartmann was sitting, that there were quite a number of scratched ballots——

Mr. BARRETT. I don't care about interrupting you, Bogy, but I am going to ask you, please, Bogy, don't make wild statements about some one; please mention his name. Now, go ahead.

A. I can't mention the name, because I don't remember who came and told me about it; but some one suggested that I go to that table and look at a number of scratched ballots. I went there and I asked permission to look at those ballots, and I was refused.

Mr. FEIGENBAUM. Will you explain to us what was known as disputed ballots as briefly as possible?

Mr. BARRETT. Now, wait a minute. I object to that, because that was all gone into in the stipulation and was testified to by a number of witnesses.

Mr. FEIGENBAUM. Go ahead. Make it short.

A. To tell you the truth, I don't know much about it. I was not speaking about disputed ballots. I was speaking about scratched ballots.

Q. Mr. Bogy, how old are you?—A. Fifty-two.

Q. How long have you been a citizen of the United States?—A. Born in St. Louis.

Q. Have you made the United States your residence during the entire period of your life—your legal residence?—A. It has been, certainly.

Q. Mr. Bogy, do you recall entering precinct 4 of ward 22 on the night of the general election, November 2, 1920?—A. I do.

Q. And what memoranda, if any, did you receive there?—A. I made a memorandum.

Q. Tell us about that?—A. I drove up to some place in the neighborhood where this precinct was and got out of my machine and was walking toward the polling place and I met a man named, I think, Dieffenbach, who was a deputy sheriff at that time, who lives on St. Louis Avenue, and he was the precinct man of the Republican organization in that particular precinct. I asked him how the voting had been going on, and he said it had been pretty heavy.

Mr. Barrett. I object to his testifying for Mr. Dieffenbach.

A. I am not testifying for him.

Mr. Barrett. Mr. Dieffenbach is a deputy sheriff in this city and could be called as a witness and could be sworn and examined.

Mr. Feigenbaum. To shorten this deposition I will ask you, after whatever conversation you had with Mr. Dieffenbach, tell us what occurred at that polling place?

A. I was in the polling place when they closed the door and Dieffenbach, who seemed to be very friendly with the judges and clerks there, said, "If you will wait a little while we can tell you how the vote for Congress run in this precinct"——

Mr. Barrett. Now, I object again to his testifying for Dieffenbach.

The Witness. I am going to testify for myself.

Mr. Barrett. Tell us what occurred, what you saw?

A. Upon the first count of the ballots for the office of Congressman there were 224 Democratic straight ballots for Hawes and 54 that had been scratched in his favor, making 278, but on account of some error that they had made they counted them over again, and they made the total for him of 279, and the total for me of 158. I took that memorandum——

Mr. Barrett. I object to this line of testimony on the ground——

Mr. Feigenbaum. Go ahead and finish your statement.

Mr. Barrett. That the returns of the judges and clerks from that precinct speak for themselves, and there has been a recount had in this case, which is a matter of record, taken by this contestant, and he is now not only attempting to question the manner in which the vote was counted in that particular precinct, but he is also attempting to impeach the recount which was taken under the auspices of the board of election commissioners, and because it has not been shown that he himself counted those ballots or had any knowledge thereof. And also because he had an opportunity of summoning the judges and clerks and the persons who were present, including Mr. Dieffenbach, and the Republican watcher and challenger of that particular precinct, which he has failed to do; and I move that his answer up to this time be stricken out.

Mr. Feigenbaum. I ask that he be given an opportunity to finish his answer before the motion to strike out is made, so as to save time. Read the last part of his answer.

(Last answer read as follows: "Upon the first count of the ballots for the office of Congressman there were 224 Democratic straight ballots for Hawes and 54 ballots that had been scratched in his favor, making 278; but on account of some error that was made they counted them over and they made a total for him of 279, and a total for me of 158. I put that memorandum——"

A. I put that memorandum on this envelope—large envelope—at that time, on which I had other memorandums. The next day I was called up and told that I had better look into that precinct.

Maj. Hawes. I object unless he states who told him; and I ask that his answer be stricken out.

Mr. Feigenbaum. Go ahead with your answer. What did you do after you were called up?

A. I found that the official returns——

Mr. Barrett. Now, here is what I wanted to get: I don't mean to be personal about it, but if you want us to wait until Bogy gets through with his answers before moving to strike them out, instead of making objections, I don't want you or your counsel, or any of your associate counsel to say that we were too late in making this motion after the witness had answered, that we should make our objection before he answered. Now, if that is understood that after the witness completes it we may move to strike it out and it won't be held against us as being too late I will agree to that line of procedure, for the purpose of saving time.

Mr. Feigenbaum. We simply ask counsel when he wishes to make on objection to make it immediately when the question is completed, and if he further wishes to move to strike an answer out to do so when the answer is completed.

The Witness. If you will let me in my own way speak of this incident it will be very short. The memorandum I made when the ballots were counted gave Hawes 279 and Bogy 158. The returns, when they came in from that precinct showed Hawes 312 and Bogy 125, a loss to me of exactly 33 votes and a gain to Hawes of exactly 33 votes, making a total loss to me in reality of 66 votes.

Maj. Hawes. I move that be stricken out, because the Republican party had in that place a watcher, challenger, one clerk, and two judges, put there for the protection of contestant, and that neither the precinct committeeman, ward committeeman, watcher, challenger, neither of the two judges or clerks have reported any such occurrence, and for the further reason that if any such testimony is to be introduced any kind of a memorandum which Mr. Bogy may have in his pocket can be introduced in relation to any precinct of the 155 in the district, when the law provides him seven or eight Republican officials to watch his interest; and I move it be stricken out for the further reason that a recount was made in the board of election commissioners' office, with two Republicans present, two Democrats present, and a watcher selected by Mr. Bogy present.

Mr. Barrett. I object to it for the further reason, because it is not shown who stated what the vote was at that time, or that there had been a complete count of all the ballots, or the votes for the various candidates, and it may have been a statement made innocently but erroneously by some one present, and it is not shown that the count was completed by the judges and clerks, and because the recount shows that Hawes received 305 votes and the returns show 312, a loss of seven votes; and recount showed that Bogy received 126 votes, and the judges returns showed 125, a gain of one vote. And further, because if this witness is permitted to testify this way he may impeach the conduct of every precinct in the district without putting a single witness on the stand to corroborate his testimony, and deny contestee the right of cross-examining the witnesses who were present or the persons who were present who are alleged to have made the announcement.

Mr. Feigenbaum. Mr. Bogy, did you see any number of ballots folded up in any irregular way in the fourth ward?

A. I did.

Q. Please explain in what manner the ballots were folded?

Maj. Hawes. I object, unless he gives the precinct and the ward.

Mr. Feigenbaum. If you know, give the precinct wherein you noticed such ballots?

A. I saw such ballots, but I can not possibly tell what precinct they were in; I made no notes of it.

Mr. Barrett. I want to object for the further reason, because we do not know at this time whether you are talking about the recount or whether you are talking about the ballots at the general election.

Mr. Feigenbaum. At what time, and what place did you observe these folded ballots which you are undertaking to explain?

A. During the recount at the city hall.

Q. Now, explain.

Mr. Barrett. I object unless he designates the ward and precinct, so that we may have an opportunity to cross-examine him on it.

Mr. Feigenbaum. Now, explain the manner in which such ballots were folded up?

A. I saw some that did not appear to have been folded at all, and others where they had just been folded over once, quite a large number of them, a very large number.

Maj. Hawes. I move the answer be stricken out, because it is impossible to identify the precinct, or afford any opportunity whatever for cross-examination, a general statement that is in effect only a conclusion.

The Witness. They were without creases.

Mr. Barrett. Also because there is no provision in law or the instructions to fold them in any particular manner.

Mr. Feigenbaum. That is all.

Cross-examination by Mr. BARRETT:

Q. Mr. Bogy, you live at 5943 Maple Avenue?—A. I do at the present time.

Q. How long have you lived at that number?—A. Well, I have, off and on, lived there for—oh, approximately about eight years, I think; I don't know exactly, excepting, as I say, I established a legal residence and went up and stayed at the home of my cousin at 1411–A Rowan Avenue, so as to register in that district.

Q. Now, we were talking about 5943. Is that your residence or are you boarding with somebody?—A. It is not my residence at all. I live there at the home.

Q. Do you board there or is it your residence?—A. I board there. It is the home of Mrs. Kate Lynch.

Q. Did you pay room rent there during the month of May, June, July, and August, 1920?—A. The room was rented that I occupied, had been rented by my son.

Q. Did you pay the room rent at this 5943 Maple Avenue during the month of May, 1920?—A. I can not say whether I did or not.

Q. Did you pay the room rent at that place?—A. My son might have paid it. We lived there together.

Q. Did you pay the room rent at that place for the month of June, 1920?—A. I can not really say whether I paid it or my son. He had his name in the telephone book as residing there.

Q. Did you pay room rent for the month of July, 1920?—A. I probably did. I don't know, but I think that I did.

Q. Did you pay the room rent during the month of August, 1920?—A. I think I did.

Q. Did you pay the room rent there during the month of September, 1920?—A. Well, to save all this long examination I will say that the room rent has been paid there steadily because my son has a large number of law books and other things that he wanted kept, and they were kept right in that room, and I occupied my son's room.

Q. Did you pay the room rent during the month of September and October, 1920?—A. I say the room rent has been paid right along.

Q. Did you pay it?—A. I probably did.

Q. Did you pay it the month of November, 1920?—A. I probably did.

Q. Is your son in town?—A. He is not. He left here——

Q. When did he leave the city?—A. I anticipated your question by saying he left here the latter part of July.

Q. The latter part of July of what year?—A. In 1920.

Q. He has been absent ever since?—A. He has been absent ever since; yes.

Q. Has the room been occupied by him at any time since July, 1920?—A. No. He has been out of the city ever since.

Q. Now, you say you endeavored to establish a legal residence at 1411–A Rowan Avenue from the 8th day of May, 1920, because you wanted to run for Congress in the eleventh district and vote for yourself; is that right?—A. Yes. I thought that was the proper thing to do.

Q. Now, did you pay any room rent there?—A. I did.

Q. Now, did you pay room rent there from the 8th day of May—did you pay room rent at 1411–A Rowan Avenue during the months of May, June, July, August, September, October, and November, 1920?—A. I paid the sum of $50 and gave a check for it, and I have the canceled check, to my cousin, Louis V. Bogy, to cover the period of my residence in that district up to the time that I might want to leave it.

Q. When was that?—A. I don't remember the date that I gave him the check.

Q. In other words, that $50 was to cover the period until after the election?—A. I didn't say that. If I had intended to stay there permanently or had I remained there permanently, the $50 would not have covered it. It covered a period of time of a few months.

Q. What months?—A. Well, whatever I suppose—well, from May to November, or something of that sort, or December, if I wanted to stay there that long.

Q. Until after the election. Then, have you maintained a residence at 1411–A Rowan Avenue ever since the election?—A. I think I was there a few days afterwards, but not very long.

Q. Do you maintain a residence there now?—A. I took my grip and things back to 5943 Maple Avenue.

Q. And you are residing at that last number ever since—5943 Maple Avenue?—A. I think I have been there every night since.

Q. How many nights did you sleep at 1411–A Rowan Avenue?—A. I don't know how many nights.

Q. Well, during the month of May, for instance?—A. I don't remember. I slept there several nights.

Q. You slept there several nights. In June how many nights did you sleep there?

Mr. Feigenbaum. I want to interpose an objection here that that is entirely immaterial.

Mr. Barrett. During the month of June how many nights did you sleep at the Rowan Avenue address?

Mr. Feigenbaum. Same objection.

A. Well, I'll tell you, Mr. Barrett, I'll make this statement: That I slept there, went there occasionally. I did not keep any particular note of the times that I spent there. It was not necessary, and it is not at all necessary to cross-examine me on that question. We are all supposed to be intelligent men, and I frankly said, and want it put in the record, that I simply established a residence there and did what I was told was the legal thing in order to enable me to vote in that district. And I did everything that I supposed was the legal thing to do, registered at the city hall, and that was the only place that I voted.

Q. And that is all you established, or attempted to establish, your residence there for—for that purpose and for no other?—A. I thought that it would be better for a man to be able to vote for himself.

Q. Well, I say that was your only reason for establishing your residence there?—A. That was the reason.

Q. And you had no other reason?—A. That was the reason, and I stated so in public speeches. I heard that I had been criticized, and I made that statement in public speeches.

Q. Now, were you ever a candidate for Congress in the tenth district?—A. I was.

Q. When?

Mr. Feigenbaum. I object to that question as being entirely immaterial with reference to the present contest.

Mr. Barrett. Were you a candidate for Congress in the tenth district?

A. Yes.

Q. When?—A. 1918.

Q. Any other time?—A. Yes; 1916.

Q. 1916?—A. Yes.

Q. Any other time—in the tenth district I am speaking of.

Mr. Feigenbaum. Same objection.

A. I was a candidate in the—I'll tell you the times I have been a candidate for Congress in all the different districts and it will save a great deal of time. I am not a bit ashamed of running for Congress and I am not a bit ashamed of having been beaten.

Mr. Barrett. All right; go ahead.

The Witness. And the only reason I am contesting now is because I don't think I was fairly beaten. I was a candidate in the eleventh district, I believe it was in 1906, if I am not mistaken—that is, candidate before a convention—and it was at the time Henry Caulfield——

Q. How many votes did your opponent get?—A. It was in a convention. If you want me to explain all about it, I will.

Q. No; that is enough. When was the next time you ran?—A. Mr. Caulfield was nominated, but not unanimously. There were some of the wards that stuck absolutely to me.

Q. Tell us the next time you were a candidate for Congress and in what district?—A. I ran in the twelfth district.

Q. When?—A. 1908.

Q. What vote did you receive then?

Mr. Feigenbaum. I object to that as being entirely immaterial with reference to the present contest.

A. I don't remember, but I received a good many.

Mr. Barrett. You were defeated, were you?

A. I certainly was.

Q. Defeated for the nomination?—A. Yes.

Q. And was L. C. Dyer nominated then?—A. No, sir.

Q. Who?—A. Mr. Harry M. Coudrey.

Q. 1908?—A. You asked me who was my opponent, didn't you?

Q. Yes.—A. Well, I told you.

Q. How much did Mr. Coudrey beat you by?—A. It was in 1908.

Q. How much did Mr. Coudrey beat you by?—A. I do not recall.

Q. Two to one, or three to one?—A. I don't think so.

Q. When was the next time you were a candidate for Congress?—A. Now, if I am not mistaken, in 1916, in the tenth congressional district.

Q. 1916 in the tenth congressional district; who was your opponent?—A. I had two opponents.

Q. Jacob Meeker?—A. Jacob Meeker and Fred Essen.

Q. You were defeated?—A. I was, but I received a very large vote.

Q. How much of a vote, and how much did your opponents receive?

Mr. Feigenbaum. I object to that as being also entirely immaterial.

A. I don't know, but I got a surprisingly large vote.

Q. Did you run second or third?—A. I don't really remember. I'll tell you——

Q. Were you a candidate for Congress at any other time?—A. In 1918, and I ran second. Meeker beat me in the tenth congressional district.

Q. In 1918?—A. In 1918 I ran second, and there were three others in the race.

Q. Who were your opponents?—A. Mr. Meeker and several others, Kersting, and I think a fellow named Steinmetz, wasn't it? Mr. Meeker, Mr. Steinmetz, I believe was the name, and Henry Kersting, associate city counselor, and myself, and I ran second.

Q. You were defeated for the nomination?—A. I ran second.

Q. Meeker was nominated and you were defeated?—A. I would like to ask one question; who is answering these questions, myself, or Mr. Hawes because it is very difficult for the stenographer to put down my answer if every time you ask me a question Mr. Hawes gives an answer.

Mr. Barrett. Mr. Hawes is calling my attention to things. He is not interrogating you. I am the only one interrogating you. Now answer the questions, please. On the occasion of the last-mentioned race was Meeker nominated and were you defeated?

A. I ran second in the race.

Q. Who was nominated?—A. Mr. Meeker.

Q. Mr. Meeker was nominated. And after that you moved over in the eleventh in 1920 to take a chance in the race for Congress there against Stifel didn't you?

Mr. Feigenbaum. I object to that, "Taking a chance."

Mr. Barrett. Is that right?

A. I don't exactly understand your method of putting that question, or the reason for it.

Q. In 1920 you attempted to make the race for the nomination as against Mr. Stifel and some other gentlemen?

Mr. Feigenbaum. I object to that form of the question, attempted to make the race. He did make the race.

Mr. Barrett. Attempted to secure the nomination.

A. I filed for the nomination in the eleventh district in 1920.

Q. And you were defeated by Mr. Otto Stifel?—A. Apparently I was.

Q. You say you were apparently defeated?—A. Yes. I thought that you knew that. I don't see why you ask me such a question.

Q. Well, do you know whether or not you were defeated?—A. Certainly. Mr. Stifel received the nomination. There was no doubt about that. We all know that.

Q. How many votes did you receive at the primary and how many votes did Mr. Stifel receive at the primary?

Mr. Feigenbaum. I object to that because that is entirely immaterial, because Mr. Stifel is now deceased, and it is entirely immaterial, so long as this contestant received the final nomination.

A. I remember one ward particularly where I beat him about two to one.

Mr. Barrett. I am talking about the entire district, Mr. Bogy?

A. I don't remember about all the district.

Q. You don't remember about all the district?—A. No.

Q. You don't remember how many votes you received, approximately, or how many votes Stifel received, approximately?

Mr. Feigenbaum. Same objection, that it is entirely immaterial.

Mr. Barrett. Just say so if you don't know how many.

A. I don't remember how many.

Q. And that was only in last August, 1920?—A. Yes.

Q. And you can't remember, approximately, how many votes you received or how many votes Stifel received. Will this refresh your memory any for me to state that the total vote cast at the Republican primary in the eleventh district in August, 1920, was over 12,000 and that you received only 1,500? Will that help you any?—A. I don't remember how many I received. I saw different newspaper accounts of it, and after I was defeated I didn't pay any more attention to it. I knew I was not nominated and I dropped it.

Q. Mr. Bogy, do you know that the eleventh district has been Democratic for the last 12 years?

Mr. FEIGENBAUM. I object to that as being entirely immaterial to this present contest, as to what was done in the past. The United States as a whole was Democratic the last 12 years and was overwhelmingly Republican in 1920.

A. It has not been Democratic for the last 12 years.

Mr. BARRETT. Well, what years was it carried by the Republican candidate for Congress?

A. There was no Republican candidate for Congress in 1918, but the district went Republican.

Q. Well, was there any candidate elected for Congress in the eleventh district in the last 12 years, any Republican candiadte for Congress?—A. I think Mr. Theron Catlin was elected within the last 12 years.

Q. When?—A. I don't remember the year.

Q. Now, Mr. Bogy, the eleventh district is composed of nine wards and parts of wards?—A. It is composed, I believe, of nine precincts of the second ward——

Q. Now, I am not asking you to go into all that detail. It is composed of nine wards and parts of wards?—A. Yes; not nine full wards.

Q. Nine wards and parts of wards?—A. You mean to say nine wards or parts of wards?

Q. Yes; nine wards or parts of wards?—A. There is a good deal of difference between nine wards and parts of wards and nine wards or parts of wards.

Q. And the wards or parts of wards in the district are the second, third, fourth, eighteenth, nineteenth, twentieth, twenty-second, twenty-sixth, and twenty-seventh?—A. Part of the twenty-seventh.

Q. The wards or parts of wards composing the eleventh district are the second, third, fourth, eighteenth, nineteenth, twentieth, twenty-second, twenty-sixth, and twenty-seventh?—A. Yes.

Q. Each one of those wards has a Republican committeeman?—A. They have.

Q. And also has a Republican committeewoman?—A. They have.

Q. And in that district there are 155 precincts?—A. Correct.

Q. And each one of those precincts has a precinct man, hasn't it, or precinct captain, whichever you choose to call him, or precinct chairman?—A. I believe so.

Q. And each one has a precinct woman?—A. I believe so.

Q. So that is 155 men, 155 women, 9 ward committeemen, and 9 ward committeewomen; is that right?—A. I presume so.

Q. Well, is that a fact? I am not asking you what you presume?—A. I can't tell you whether they are all serving now or not. I presume that they have.

Q. Now, did you subpœna any of the nine committeemen of those nine wards to show fraud or irregularities in the election of November 2, 1920?—A. I think two were subpenaed.

Q. Who were they?—A. Polito and Moone.

Mr. FEIGENBAUM. No, not Polito; he wasn't subpœnaed.

Mr. BARRETT. You say Polito and Moone?

A. No; I thought it was Polito, but it was only Moone.

Q. Did you give us a notice containing the name of Polito as one of your witnesses?—A. Not that I know of. I don't know what names I gave you.

Q. The only Republican committeeman that you issued a subpœna for was Elmer Moone of the twentieth ward?—A. That is all I know of. I wasn't paying any particular attention to all these people who were subpœnaed.

Q. And you scratched his name off and did not put him on the witness stand?

(No response.)

Q. You did not put him on the witness stand?—A. I never scratched his name off.

Q. Well, did you put him on the witness stand?—A. We wanted to put him on the witness stand, I presume; I don't know; my attorneys were attending to that.

Q. I say did you put him on the witness stand? Was he placed on the witness stand?—A. I have not seen him on the witness stand.

Q. You were present throughout the taking of these depositions?—A. I told you I did not see him on the witness stand.

Q. Did you put any one of the nine committeewomen on the witness stand?—A. No.

Q. And of the 310 precinct men and precinct women you put on 3, I believe, didn't you?—A. I don't really know how many they put on. I don't know, but I think Mrs. Blesse is the chairman of that district, chairwoman of the district, whatever you call it; that is my impression. When she was subpœnaed I thought she was the chairman of that district, or chairwoman.

Q. All right. Assuming that she is the committeewoman for the twentieth ward——A. I thought she was the chairman of the district.

Q. But you did not subpœna any of the other committeewomen?—A. Not to my knowledge.

Q. You did not subpœna any of the others?—A. Not to my knowledge.

Q. Now, if there had been any fraud or corruption along the line or along the scale alleged in your notice of contest wouldn't these precinct men and precinct women, ward committeemen and ward committeewomen be the ones that would be naturally able to find it out and ferret it out?—A. Well, they might be.

Q. They are the ones that were actively engaged in the last election endeavoring to elect the entire Republican ticket, weren't they?—A. Well, not more than others. Mr. Jesse Barrett took a great deal of interest in the campaign and worked very hard in the district, and he was one of those who urged me strongly to bring this contest. He is now attorney general.

Q. I don't care who urged you to bring it; you had a right to bring it.—A. And Supreme Judge Conway Elder.

Q. Now, Mr. Bogy, there was a Republican watcher and challenger for each precinct in the eleventh congressional district?—A. Not all of them.

Q. Not all of them?—A. No.

Q. How many of the 155 were without watchers or challengers?—A. I don't know how many, but I know that they were not in all of them.

Q. Well, there are 155 precincts; that would make, for a watcher and challenger for each precinct, that would make 310. Were there as many as 300?—A. I don't know.

Q. But anyway there was a considerable number in the various precincts representing the Republican party as their challengers or watchers?—A. I presume so.

Q. And there should have been a challenger and a watcher at each precinct if it was properly attended to by the Republican organization?—A. If it was properly attended to I presume there should have been. If everything had been correct and right there certainly ought to have been.

Q. And of all the Republican challengers and watchers you only called as a witness one from the twelfth precinct of the nineteenth ward, I believe it was—Republican I am speaking of now?—A. As far as I am concerned I don't even know who held that position.

Q. Well, now, you did not subpœna any other Republican watcher or challenger except this one from the twelfth precinct of the nineteenth ward; that is true, isn't it?—A. It was never suggested to me and I never thought of it myself.

Q. Well, I say you didn't do it?—A. Not that I know of. Maybe some of these men who were subpœnaed were, I don't know; I don't know the names of all who were subpœnaed.

Q. Now, then, in each precinct there are two Republican judges and one Republican clerk?—A. I suppose there should have been. I don't know whether they were all there. I did not visit every precinct on election day.

Q. Do I understand you to say that there was a single precinct of the 155 in which the Republican party was not represented officially by two Republican judges and one Republican clerk?—A. Well, I can't say from my own positive knowledge they were all there. One man might have been suddenly taken ill and taken away. I don't know whether they were all there or not.

Q. Well, if they were all there representing the Republican party that would make a total of three times 155, which is 465; is that right?—A. If they were all there.

Q. Yes.—A. That figuring is correct.

Q. Now, did you subpœna a single one of the Republican judges and clerks who officiated at the election in 1920 at which you were a candidate?—A. I really don't know.

Q. Well, do you know of one?—A. I really don't know.

Q. Mr. Bogy, in the article which you introduced in evidence in this case, purporting to have been published in the St. Louis Times of November 4, and marked "Contestant's Exhibit L," there is a public statement or a purported interview by you, in which you said there would be a meeting of the eleventh congressional district committee either that day or the next day to determine what course you would pursue. Was such a meeting held as referred to in this article?—A. It was, but not the entire committee. There was some of the members of the committee met.

Q. How many members of the committee were present?—A. I do not recall how many; I think there was four or five of them there.

Q. Four or five?—A. Yes. There might have been six; but there were several of them absent.

Q. But wasn't there a second meeting of the congressional committee after that?—A. Not that I know of.

Q. Never had a meeting after that that you know of?—A. I did not attend any.

Q. Don't you know as a matter of fact that the Republican congressional committee of the eleventh district appointed a subcommittee to look into the merits of your complaint as to the conduct of the election?—A. Now, just let me answer this, please, without any interruption and you will learn something about it.

Q. Answer yes or no, and if you have got an explanation you may follow with it.—A. I will not answer yes or no. I will answer it with perfect correctness if you will allow me to do so.

Q. The question ought to be answered yes or no, followed by your explanation. I will put the question again.—A. I understand the question thoroughly.

Q. I dont' think you do. Mr. Bogy, a subcommittee was appointed by the Republican committee to investigate the complaint you made about the election, or to see if there was any merit in your complaint?—A. That is not the substance of what I recall. Now, if you will let me explain that to you, I will do so.

Q. All right. Go ahead.—A. All right. At that meeting——

Q. Now, when was this meeting held, and where?—A. I don't know just when, but it was held at the headquarters of the city central committee in the Odd Fellows' Building. I want to state this absolutely correctly, very briefly, what occurred, if you will allow me to do so. As I remember, at that meeting was not only some of the members of the committee, but Congressman Cleveland Newton was also present, and it was suggested that a committee be appointed—I don't even remember who was on there, or if it was appointed at that time—to look into the matter, and the committee again to be called together as soon as Mr. George B. Webster returned from Washington, because they said it was impossible to do anything until he returned; they wanted to see how to proceed——

Q. I am not asking you to testify for the whole committee; I am simply asking you if there was a meeting held.—A. And they have not had a chance to see Mr. Webster since. I never knew that they made any report. They did not make any report to me. I never attended any meeting of the committee since that time.

Q. Mr. Bogy, that answer is not responsive to my question. I did not ask you any such question as that answer you gave. I simply asked you if a meeting was held and a committee appointed to consider your complaint as to the merits of the election, if there was such a committee appointed.—A. I do not recall if the committee was appointed or was to be appointed. I do not remember whether they appointed a committee at that time or they decided a committee would be appointed by the chairman of the committee.

Q. For the purpose of refreshing your recollection, do you know whether or not a meeting was held by the subcommittee of the Republican congressional committee, consisting of four or five members, and the meeting was held at the Planter's House, at which George Hohman was present and you were present?—A. I do not remember attending any meeting of any subcommittee. I remember meeting a good many members of the committee at the Planter's House.

Q. When was that meeting at the Planter's House held?—A. I think that meeting, if I remember correctly, was held before the meeting that was held at the Odd Fellows' Building, I believe it was.

Q. The Planter's House meeting was held——A. It wasn't a Planter's House meeting. Some one telephoned me and suggested that I come down to the

Planter's House, that a good many members of the committee were to be there. They were going to take lunch there, and they suggested that I come down there; and I got in very late; in fact, they were pretty near all through lunch; so much so that I did not take any lunch there because they were all about ready to leave when I got down there. This Planter's House meeting you refer to, what date that was I don't know, because I frequently met members of the committee at the Planter's Hotel.

Q. You don't remember, then, of any meeting held at the Planter's House at which your proposed contest was to be looked into with respect to the merits of the election with a view of instituting a contest or not instituting a contest; you don't recollect any such meeting at which you were present?—A. I remember the Odd Fellows' Building meeting now very particularly, but I do not remember what occurred at any informal lunch.

Q. You heard my question, and it had relation purely to any meeting that was held at the Planter's House. I asked you if you recollect of attending any meeting after the election of the Republican committee of the eleventh district, or any subcommittee thereof, for the purpose of inquiring into the election in the eleventh district, held at the Planter's House, with a view of determining the advisability on your part of instituting the contest or not instituting it? Do you remember attending any such meeting at the Planter's House after the election at any time? Now, answer yes or no.—A. The only meeting that I remember of attending in regard to the election contest was the one in the city central committee room. After the meeting several members of the committee at the Planter's Hotel had luncheon; that is, they had about finished their lunch when I got in there; they were pretty near through, and I did not take any lunch, because they were all pretty near through.

Q. Well, after this meeting at which you met some members of the committee at the Planter's House luncheon did you discuss the election? Did you or did you not?—A. We might have discussed the election. I think we probably did. I do not remember just what we discussed.

Q. Well, then, why didn't you discuss it?—A. Well, we probably did.

Q. You probably did. And did you at that meeting lay before the members of the committee who were present your complaint about the conduct of the election?—A. The members of the committee complained a good deal about the conduct of the election.

Q. I am asking you did you lay before them your complaint, if you had any, as to the conduct of the election? Did you make any complaint?—A. If I remember correctly, the members of the committee discussed the election and complained about it.

Q. Some of the members discussed the election and complained about it; is that true?—A. I think that they did. There was a general discussion about it.

Q. Now, which members of the committee was it?—A. I can not remember. I can not even tell you who was there, excepting that I remember of—I can't remember who was there or was absent.

Q. You can not remember the name of a single member of the Republican committee who was present at that Planters House meeting or luncheon that you refer to?—A. I want to tell you something, Mr. Barrett; I have answered you as well as I could at least 25 times. This record is going before an intelligent body of men, and I do not care to have it appear to those men that I was made foolish by cross-examination, and I am not going to permit the thing to show up in that manner at all.

Q. Then there should be intelligent responses to my questions, so that intelligent gentlemen can understand them. Now, Mr. Bogy, can you name a single member of the Republican committee who was present at the Planters House luncheon, or any other meeting, who made any complaint about the conduct of the election? If so, name him.—A. I do not remember just what was said at that luncheon. I remember distinctly what was said at the other meeting, because that was the regular called meeting. At this informal meeting I paid no attention to what was said.

Q. Now, Mr. Bogy, you are not answering my question. I am speaking of the Planters House luncheon.—A. You have asked me about 40 times, and I told you I did not remember what was said, and I refuse to——

Q. Wait a minute. You don't remember what was said or the nature of the complaint that was discussed there; is that right?—A. I told you that I don't remember, three or four times.

Q. You don't remember the name of the committeeman or committeemen, if there were more than one, who made the complaint at the Planters House luncheon?—A. Yes; I do remember now; it comes to my memory.

Q. Who was it?—A. One man who said that——

Q. What was his name?—A. I will tell you in a minute, and I will tell you what he said, too.

Q. Just give us his name first.—A. He said——

Q. Wait a minute. I want the name of the man before you undertake to tell me what his complaint was.—A. Then you might want to change your question, and I want to answer first.

Q. No; I won't change the question. Give me his name and then tell me what he said; I won't object to your telling what he said if you give me his name.—A. Mr. Polito.

Q. Mr. Nick Polito?—A. Mr. Nick Polito stated that in his ward in one instance he had to be called upon because some Democrat was going to use a gun on some Republican for some reason or other, and that they had absolutely refused to allow the negroes to vote.

Q. Nick Polito is the committeeman——A. Nick Polito is one of the committeemen of the eleventh congressional district.

Q. From the fourth ward?—A. From the fourth ward. And he said a lot of other things.

Q. You did not subpœna him?—A. I tried my best.

Q. Well, did you serve notice upon contestee that you were going to take Mr. Polito's deposition at any time during the 40 days?—A. I wanted to serve him.

Q. I say did you serve notice on the contestee that you would take Mr. Polito's deposition?—A. Well, as I understood it——

Q. Now, answer my question.—A. I will answer it in my own way, or I won't answer it at all.

Q. You are going to answer it, or you are going to get my persistent questioning to show that you do not answer it in this record, and that you are trying to evade it. I am asking you a direct question, Mr. Bogy, did you serve on contestee——A. I don't know.

Q. Or attempt to serve——A. I don't know. I had an attorney, and the attorneys are the people to serve these things. I know that I left a subpœna at Mr. Nicholas Polito's house myself; 2705, I think it is, North Semple Avenue; I think that is where I left it. I gave it to his wife, and whether they got it in the notice or not I don't know.

Q. Mr. Bogy, I am going to hand you a notice addressed to Harry B. Hawes, contestee, or his attorney of record, advising him that you were going to take the depositions of witnesses named in the notice on the 24th day of January, 1921, and ask you to examine that signature there, and state whether or not that is your signature, Bernard P. Bogy, and of Cornelius F. Bauer, and J. M. Feigenbaum, your attorneys?—A. That is my signature.

Q. And that is also the signatures of your attorneys, Messrs. Bauer and Feigenbaum?—A. I presume it is. I don't doubt it.

Q. Now, then, I hand you two other notices advising contestee, or his attorneys, that you were going to take depositions of witnesses on the 28th day of January, 1921, and on the 27th day of January, 1921, giving the names of the witnesses whose depositions you were going to take, and I will ask you to examine the signatures there of Bernard P. Bogy, Cornelius F. Bauer, and J. M. Feigenbaum, your attorneys, and ask you whether or not they are yours and their signatures?—A. I know that to be my signature, and I believe it to be the signatures of the others.

Q. These three papers contain the lists of all the witnesses of which you gave any notice to the contestee, I believe?—A. I don't know whether they do or not.

Q. I will ask you to confer with your counsel and ascertain whether or not there were any others?

Mr. Feigenbaum. I am willing to concede, as attorney for Mr. Bogy, that those three notices contain all the names of witnesses whose depositions we thought could be taken from the subpœnas that have been delivered.

Mr. Barrett. Now, Mr. Bogy, in looking over these lists, which are the lists of all of the witnesses whose names you indicated to the contestee as witnesses whose depositions you desired to take, do they contain the name of Mr. Polito, or any other Republican city central committeeman, except Elmer L. Moone?—A. Well, I say this: That I do not see the names of any others on there. I never examined these things; I just signed what they brought me to sign. I did not examine a one of them.

Q. Do these lists contain the names of any Republican committee women besides Mrs. Bleese?—A. Not that I know of. I never examined them. They were gotten up by my attorneys, and I signed what they told me to sign.

Q. Now, Mr. Bogy, did any other Republican committeeman in the eleventh district make any complaint that you know of about the conduct of this election outside of Mr. Polito?—A. I did not see the act done, but Mr. Hohman told me that he had telegraphed to Washington something about it to Cleveland Newton, but I don't know whether he did or not.

Q. Did Mr. Hohman make any complaint to you about the conduct of the election?—A. I don't remember.

Q. Did Mr. Hohman tell you that he had made a complaint to Mr. Newton about the election?—A. Mr. Hohman simply told me that he had, or was, going to telegraph to Mr. Newton, and he told me and, in fact, Newton told me, too, that——

Q. Never mind about Newton. We are speaking about Hohman.—A. That Hohman had been in to see him.

Mr. Barrett. Leave Newton out of this.

Mr. Feigenbaum. We have no objection to striking that name out, if he doesn't want it in there.

Mr. Barrett. You did not subpœna Mr. Hohman?

A. No; we did not, not that I know of. I don't know who they subpœnaed.

Q. Was there any other member of the Republican city committee that you heard make complaints about the conduct of the election?—A. As I say, I paid very little attention to the talk at that luncheon.

Q. I am speaking of any meeting at any time.—A. Well, wait a minute. That is what I want to talk about if you will allow me to do it.

Q. I am not confining it to the Planters House; I say any meeting with the members of the Republican committee anywhere—at the Planters House, on the street corners, or any other place?—A. It comes to my mind that Mr. Butler complained about something in the twelfth precinct of the eighteenth ward.

Q. That is E. E. Butler?—A. Yes.

Q. He is the ward committeeman of the eighteenth ward?—A. Yes; he is the ward committeeman of the eighteenth ward.

Q. You did not supœna him as a witness in this case?—A. No; I did not, not that I know of. I don't know who my attorneys subpœnaed.

Q. His name is not contained on any of the lists of witnesses that you served on contestee?—A. I do not see it on there.

Q. Now, then, did you hear any complaint from any other member of the Republican committee?—A. Excepting at this meeting, I have not seen any of them.

Q. Well, at any time on the street corners, at luncheons, or any other place?—A. I say I have not run across them.

Q. Well, you heard no complaints from any others except those you have already mentioned?—A. Yes.

Q. Who?—A. Mr. Nat Goldstein told me that I had been beaten out of about 300 votes in his ward.

Q. Nat Goldstein told you that you had been beaten out of about 300 votes in his ward?—A. Yes; he did; and he said he thought if I would contest it I would get those 300 votes.

Q. When did Nat Goldstein tell you that?—A. I don't remember just when he did tell me that.

Q. When and where?—A. I do not remember just when and where, but I remember his——

Q. Nat Goldstein is circuit clerk of the city of St. Louis, isn't he?—A. Yes.

Q. At the courthouse?—A. Yes, sir.

Q. And is Republican committeeman from the nineteenth ward?—A. Yes.

Q. You did not subpœna him, did you?—A. No; I don't think so.

Q. Haven't you seen Nat Goldstein a dozen times within the last 30 days?—A. No; I don't think I have seen him a dozen times.

Q. How many times?—A. Probably two or three times—something like that.

Q. Two or three times?—A. Two or three times; I don't know; just the other day I passed through the courthouse and saw him.

Q. Did you ask him about the details of this fraud that you speak of, these 300 votes?—A. Yes. He said it was through the——

Q. Wait a minute. You have answered the quesiton.—A. You asked me; let me answer you.

Q. I asked you did you ask him about the details of these 300 votes.—A. I told you I did.

Q. What ward and precinct was it?—A. He said there was one precinct there where he thought I would gain 300 votes.

Q. What ward and precinct?—A. I don't remember the precinct.

Q. You don't remember the precinct?—A. No; I don't.

Q. Was it precinct 12 of ward 19?—A. No; it was not precinct 12 of ward 19, because I don't think that is a Negro precinct. I think he said it was where—it was a Negro precinct where they would not let them vote.

Q. Yet you did not subpœna Nat Goldstein or anybody from that precinct to prove that statement?—A. I did want to subpœna some one who knew all about it, a fellow by the name of Gottbald, I was told his name was.

Q. Who told you his name was that?—A. I have forgotten who told me; some one told me to subpœna him: that he lived on Morgan Street.

Q. Nat Goldstein gave you some information about it, you say, and he gave you the names of some persons, and he said they would substantiate that statement; did he or did he not?—A. I don't think he gave me the names of anyone who could substantiate it. Some one did give me his own name and said that he could show it, and that was Mr. Niederluecke, who is the alderman from the nineteenth ward.

Q. Mr. Niederluecke was not put on the stand as a witness, was he?—A. Mr. Niederluecke was here and waited, and waited, and waited, and then went away.

Q. Well, you had ample opportunity to place him on the stand, didn't you?—A. I did not.

Q. How?—A. You were cross-examining the witnesses such a long time he couldn't wait.

Q. We waited two hours and a half to-day for you to place a single witness on the stand.—A. Yes; but I could not get Mr. Niederluecke to-day.

Q. Waiting for you?—A. I could not get him. I telephoned for him, but I could not get him on the phone.

Q. You had 40 days in which to subpœna Mr. Niederluecke, didn't you?—A. I had other men who belonged to the organization that I wanted to have subpœnaed, that I wanted to have here to-day, and I tried to get them, and I could not do it. They have been here, though.

Q. I say, you had 40 days in which to take testimony, beginning on the 22d——A. No, sir; I didn't. And I will tell you why——

Q. Wait a minute. You did not take his deposition during the time allotted to you by law, did you?—A. I had less than 20 days.

Q. I say, did you take it or did you not?—A. Did I take whose deposition?

Q. Niederluecke's?—A. No; because I could not reach him. He was subpœnaed though, and was here at the time the subpœna called for.

Q. You did not ask for an attachment for him, did you?—A. No. I have not asked for an attachment for anybody. I didn't even know that you could get an attachment, and I didn't know that they could be brought in. I thought that this was not a court proceeding, and if they did not want to come you could not make them. I didn't know anything about that.

Q. You had an attorney representing you throughout this case, didn't you?—A. Yes.

Q. You had three of them, in fact? You had Mr. Cornelius Bauer, J. M. Feigenbaum, and Leon Feigenbaum; is that right?—A. Well, it seems to me that Mr. Feigenbaum has been doing most of the——

Q. Wait a minute. You had three lawyers here when the recount started?—A. I did have Mr. Webster, and——

Q. I am talking about the recount.—A. And I told the contestee that he was in Washington, and——

Q. I say, since the recount started you have been represented by three lawyers?—A. Yes; at different times. Mr. Bauer, though, has been sick all the time, pretty near.

Q. Well, he was here part of the time?—A. He was here about a half hour or an hour one day, and he was so sick he couldn't hardly sit up. He lives out in the county, and has not been in the city since.

Q. He was present during the recount?—A. Part of the time. Only part of the time was he present at the recount.

Q. Now, speaking about lawyers, and about one being here part of the time; there is some 1,600 lawyers in this city that you might have applied to and engaged; isn't that true?—A. I would hate to have 1,600 of them.

Q. I say, there would be no difficulty in employing lawyers to represent you in the city of St. Louis?—A. I believe that you could employ lawyers.

Q. There are plenty of them here?—A. Yes.

Q. Now, then, there was no attempt on your part or the part of your counsel, so far as you know, to have process issued for Mr. Niederluecke nor any other witness who refused to attend in obedience to the subpœna?—A. I do not know of any. As I say, I don't know of any attempt to—I didn't know whether they got out an attachment for them or not. I know nothing about it.

Q. You were present all the time during the taking of these depositions?—A. Yes.

Q. And you never heard any requests made for an attachment for anybody?—A. I have not heard of it. I don't know whether there was any attempt to get out an attachment for any witness, but had I heard that such an attempt was to have been made to bring in a witness who had been down here and waited for hours and hours and hours to testify, I would have been against getting the attachment out—all during these cross-examinations which have just about as much bearing on the case as this has.

Q. Didn't you threaten Goldsmith with an attachment if he did not come over here and testify?—A. I certainly did not.

Q. Did your attorney threaten him?—A. I don't know what my attorneys did.

Mr. Feigenbaum. I will say that as far as I am concerned, I never threatened anyone with an attachment.

By Mr. Barrett:

Q. Now, Mr. Bogy, did you hear any complaint made by any of the Republican committeewomen in the eleventh congressional district outside of Mrs. Blesse?—A. On election day I did.

Q. Who?—A. I don't know her name. She told me she was the committeewoman of the——

Q. Did you ask her her name?—A. I asked her her name, and I have forgotten it. She said she was the committeewoman of that ward. I think it was the nineteenth ward.

Q. Nineteenth ward?—A. Yes.

Q. Did you issue any subpœna for her?—A. I did not, not that I recall.

Q. You do not recall at this time. Did you hear any complaints from any of the Republican precinct men of the 155 precincts, other than that of Mr. Haffner, about the conduct of the election?—A. I certainly did.

Q. Name them.—A. One of them was——

Q. Give the ward and precinct as you name them.—A. He was in precinct 4 of ward 26.

Q. What is his name?—A. His name is Fred Paul. He told me that the Democrats were bringing them in from other wards and precincts and trying to vote them in his.

Q. Was he placed on the stand as a witness by you?—A. Lord knows; I tried to get him again to-day. He was here the other day, and he said he would come back to-day; and the last time I telephoned his wife she said he had been kept home all day on account of a sick baby. They have a new baby there.

Q. Now, can you recall any other?—A. Not by name. I was at a meeting of one of the wards; in fact, I have been at a meeting in two wards where I heard—that is, of the organizers and workers, where I heard the complaints made.

Q. Well, did you take their names and addresses down?—A. No; I did not.

Q. Did you endeavor to take their names and addresses?—A. One of them was at the twenty-sixth ward meeting, the letter from which club has been introduced here in evidence. I will say that Mr. Paul is the man that we waited here for for two hours, I think, to-day.

Q. Waited two hours to-day?—A. I think it was about two hours they waited for him.

Q. Where?—A. Here in this office.

Q. Well, we were here ready and willing all the time to proceed.

Mr. Feigenbaum. No question about that.

The Witness. So was I. I am very sorry that he did not come, because it is testimony that would have been very valuable in showing up the repeaters.

Mr. Barrett. Was Mr. Paul here yesterday?

A. I don't know. He told me that he had been here and waited—he says, "I went down there and waited"——

Q. I am not asking you what he told you. I am asking you was he here? Don't testify for Paul.—A. I don't know. He was to have been here yesterday. That was the day he was subpœnaed for.

Q. Now, can you recall any others of the 155, other than those you have mentioned? You say you heard some members of the precinct organization make complaint, but you don't know their names or addresses?—A. I heard quite a number of them.

Q. Well, you did not take their names down, did you?—A. No; I did not at the time, because, as I told you, I was waiting for Mr. Webster. He told me over the long-distance phone, and he also wired me several times——

Q. I don't want to hear about Webster's conversation.—A. That he would be back in a few days. He was my attorney at the time, and I was waiting for him.

Q. I am asking you if you made any endeavor to ascertain the names and addresses of those men you say were members of the precinct organization that made complaints about the election so that you might issue subpœnaes for them; did you do so, or did you not?—A. No; because——

Q. Never mind because; you didn't do it?—A. I thought photographs would be taken of the scratched ballots, and we would find all the evidence we wanted in those.

Q. I see. You thought a photographic copy of the scratched ballots would be all you needed. Did you summon a single Republican judge or clerk of election as a witness?—A. I don't know that we did.

Q. How?—A. I don't know that we did; I don't know who we subpœnaed. I have never conducted a contest——

Q. Well, did you hear any complaint by any Republican judge or clerk of election?—A. Yes; I did hear a complaint——

Q. What is his name, and what ward and precinct does he represent?—A. And he was subpœnaed.

Q. What is his name?—A. It is pretty hard to pronounce his name. He said that the Republican ballots were already scratched; that is, my name was scratched out and Hawes's name written in before the ballots were opened; the seventh precinct, I think it was, of the twentieth ward.

Q. What is his name? Don't make such wild statements, attempting to testify for people. What is his name?—A. Louis Kozlicki.

Q. Louis Kozlicki?—A. I think that is right.

Q. Of 2503-A Coleman Street?—A. That is what it says there.

Q. I am asking you.—A. I have never been in his house. I suppose he lives there. That is his address, so far as I know.

Q. Now, did you hear any others?—A. I do not recall at this time. I did not see much use in subpœnaing judges and clerks of election.

Q. Now, wait a minute. Let's not be giving your opinion. Just answer my questions, and we will get along very rapidly. You did not subpœna any judges or clerks other than Mr. Louis Kozlicki?—A. I have stated a large number of times, not that I know of.

Q. Well, that is a complete answer.—A. I left that to my attorneys.

Q. Now, then, Kozlicki did not testify in this matter, did he?—A. No.

Q. Now, Mr. Bogy, you subpœnaed some three or four Socialists and Farmer-Labor challengers and watchers here?—A. I did not know what party they belonged to at all.

Q. Well, you heard them testify here. There was some three or four members of the Socialist and Farmer-Labor Party; is that right?—A. Yes; I heard them so testify.

Q. Why didn't you subpœna some of the members of your own political party instead of Socialists and Farmer-Labors?

Mr. FEIGENBAUM. I object to that. A man will testify to the truth as well if he belongs to the Farmer-Labor Party as if he belongs to the Republican or Democratic Party.

Mr. BARRETT. Now, answer the question.

A. As I told you, I did not know what political party these men belonged to who were subpœnaed. These men who appeared here the other day that said they were Socialists or members of the Farmer-Labor Party, I had no idea what party they belonged to.

Q. I am asking you why you subpœnaed them and did not subpœna the members of your own political party?—A. I might have supposed—I did not know that they were Socialists or members of the Farmer-Labor Party. They might have been Republicans or Democrats.

Mr. BARRETT. That is all.

(Signature waived by agreement.)

Mr. BARRETT. Now, I want to recall Maj. Hawes and complete his cross-examination, which I reserved the right to do the other day.

Mr. FEIGENBAUM. I want the record to show that we ask to be given an opportunity to—that there are about 20 minutes left, and we ask to be given at least 5 minutes of that, if any new matter is taken up in cross-examination, to be able to continue our redirect examination.

Maj. HARRY B. HAWES, having been heretofore duly sworn and testified in chief and on cross-examination, was recalled and testified further on cross-examination, as follows:

Cross-examination (resumed) by Mr. BARRETT:

Q. Now, Maj. Hawes, I want to hand you contestant's Exhibit K, purporting to be receipts and expenditures of the general Democratic committee for the eleventh district, and ask you to examine same, as I desire to ask you some questions pertaining to same. Did you tell Bernard P. Bogy, the contestant, after the election that you were surprised that your old opponent, Joe Folk, had contributed $150 to your campaign?—A. I had a conversation with Mr. Bogy, in which I discussed this statement, and told him that I did not know of a single contribution on that list until I read it, or saw it the day that it was filed, and that I was very much surprised at some of the names that appeared on it. I believe that I did say I was surprised to see Folk's name on it.

Q. Now, do you know whether or not that committee made a special effort or expended moneys in your behalf especially, or whether the work was done for all the candidates on the National, State, and city tickets?—A. I understand their work was done generally for everybody.

Q. Is there any means that you have of knowing whether or not they expended any particular sum for the National, State, or city candidates, or for your own candidacy?—A. The first I knew of this money or of this list was the day that it was filed, whichever day that was.

Q. Did you know anything about the "Hawes for Congress Club"? Did you know of the existence of such an organization, or was there such an organization existing, if you know?—A. I believe I explained on my first examination that I heard there was a Hawes for Congress Club, with headquarters downtown, where they had a large banner, "Hawes for Congress Club, W. L. Igoe president," and it was abolished. I was never in the place in my life. And this banner was taken out and put up at the headquarters of the general committee, on Grand and Easton Avenue.

Q. Now, at that place at Grand and Easton Avenues—Mr. Bogy referred to that in his testimony—were there other banners and other pictures of other candidates besides your own? If you know, you may state.—A. The Hawes banner was the most conspicuous banner, because it was a large one, prepared for down town and brought out there; but there were pictures in all the windows—Cox pictures and Long's and Atkinson's and Larry McDaniels's—and, as I recollect it, the pictures were plastered with the pictures of all the candidates—Brogan's, O'Brien's picture, every candidate in that district who had a photograph.

Q. Now, did you tell Mr. Bogy that the whole Democratic machinery was concentrated in the eleventh district to elect you?—A. I did not. I had a conversation with Mr. Bogy prior to his filing his contest and tried to persuade him not to file his contest; took the trouble to compare my votes with those of Cox, which showed a uniform distribution of my majority over Cox. Scattered through, I believe, 139 out of 155 precincts, I ran even with Cox in 9 and only behind him in a few precincts. We discussed the matter at length. I told him that I would put all my cards on the table, answer any questions that he or his attorney wanted to ask me about the entire conduct of the election; and it was during those conversations that these matters were referred to.

Q. And you did not tell him, then, as I understand it, that the machinery of the entire Democratic organization was concentrated on your election in the eleventh district?—A. No. I contrasted the activity in that district with that of other districts and called to his attention the fact that no prominent Republican speakers were brought into the district to support the Republican ticket, but on the other hand we had a great many of the most prominent speakers that came into the city who did speak in the eleventh congressional district for the Democratic Party.

Q. Now, do you know Dr. R. Emmett Kane?—A. Yes; I know him.

Q. Do you know who he is and what he represents?—A. Dr. R. Emmett Kane is the most distinguished advocate of Irish freedom in the city of St. Louis, certainly the most eloquent, and is president of the organization known as the Friends of Irish Freedom.

Q. Do you know who Dr. Kane supported in the election for Congress in the eleventh district?—A. He supported me very actively.

Q. Did he publish a newspaper article?—A. He published several articles, stating that he was going to support me because he thought I was a better man than Bogy, and in one of these articles——

Mr. FEIGENBAUM. Just a minute.

A. As I recollect it——

Mr. FEIGENBAUM. I want to object to that unless the newspaper article is introduced in evidence, and that is the best evidence of that fact.

Mr. BARRETT. Proceed. Answer the question.

A. He contrasted Bogy's position on the Irish question, as I recollect it, with mine frequently. Bogy's position was that he favored the recognition of the present Irish Republic. My position was that I was a friend of Ireland, but that I would not pledge myself in advance to do anything for the present Irish Republic that was injurious to my own country or threatened war with England. In other words, I gave consideration to America first, and Mr. Bogy seemed to give consideration to Ireland first.

Q. Were you present throughout the recount at the office of the board of election commissioners?—A. I was there every day.

Q. Mr. Bogy has made some reference to a statement by Commissioner Dempsey; do you recall that statement?—A. Very clearly.

Q. Will you state your recollection of what Commissioner Dempsey stated?—A. Commissioner Arnold had issued instructions to the watchers to the effect that they were permitted to watch the work of the deputy election officials and take such memorandums as they desired of disputed ballots, but that they were not to touch or handle the ballots. Someone reported to Dempsey, who went out—I was back of him—and he found one of the watchers at one of the tables was assisting two clerks in counting the ballots, and he told him he must stop. He then made a general announcement that watchers should not handle the ballots; that they had been so instructed by Mr. Arnold, for the board; and that if any of them in the future did it that he would report it to their counsel and have them removed, or something to that effect.

Q. Do you recall the second statement referred to by Mr. Bogy as being made by Commissioner Dempsey?—A. I was in the board room at the time, I think, with Commissioner Arnold, I believe Commissioner Dempsey, and either Buder or Lammert. Anyhow, there were three of them there, and someone came in and complained that Hartmann, one of Bogy's watchers, was taking a list, or taking the numbers of ballots, and I believe the Republican election chief clerk was sent for Hartmann to bring him in the room. When Hartmann came in the room Arnold questioned him, and Hartmann produced a sheet which had a large number of numbers of ballots. Arnold asked him if he did not know that taking the numbers of those ballots would, if comparison was made with the poll books, disclose the names of voters, and thus violate the secrecy of the ballot. Hartmann said that he thought he had a right to do it. Arnold told him that he did not have a right to do it, and that he would not permit Mr. Hartmann or anybody else to take information out of the office as to how men cast their votes, and to punish their political enemies in that way. He told him to stop. A short time after that Dempsey made two announcements, one in the large room and one in the smaller room facing the election commissioners' rooms. As I recollect it his statement was this: "Watchers shall not take the numbers of any ballots excepting disputed ballots."

Q. Of which the recount clerks made a notation on their sheets?—A. That is right.

Q. What was your impression, Mr. Hawes, of the recount? Was it fairly conducted and honestly conducted or not?—A. Why, in the first place Mr. Bogy and his counsel, Mr. Bauer, had a long discussion with the members of the board about a stipulation. This stipulation was finally reduced to writing, and signed by the contesting parties. Then the question came up for instructions for the recount for the recount clerks. This was followed by the preparation of a form on which the clerks were to make their reports to the board. The theory of the whole recount was that the clerks should open the ballot boxes, make the recount and tabulation, and where they could not agree the ballot in dispute was to be placed in what was called a disputed envelope, and this referred to the four members of the board for decision. Watchers had the privilege of pointing out to the clerks engaged in the recount, or to either of the contestants, or their attorneys, any irregularities that were discovered during the recount. And if a dispute arose about a ballot, this ballot was then to be placed into the disputed envelope, and referred to the board. Later on I was present when the board, in the presence of Mr. Bogy and myself, and our counsel, opened these disputed ballots, discussed their condition, and awarded them either to Mr. Bogy or myself, as they deemed advisable. We were all permitted to examine each disputed ballot, and discuss the merits of the ballot, but the final decision was left to the board.

Q. Now, do you recall at any time, Commissioner Dempsey stating that the watchers were not permitted to take notations of any ballots at all? Did he make any such statement as that, to your recollection?—A. At no time. I followed Commissioner Dempsey from the room after the Hartmann incident, and he distinctly stated that numbers should not be taken of any ballots excepting those that were in dispute.

Q. Questioned for one ground or another?—A. For one ground or another.

Q. Now, for instance, scratched ballots which either side might desire to question on the ground that there was a similarity of handwriting, could they question those ballots and have them placed in the disputed envelope and referred to the board?—A. I never had any doubt about the matter. The only time I heard any question raised was where three ballots appeared in the disputed envelope which Mr. Bogy's counsel asked to be photographed, and the permission was granted, three or five, I don't remember which; and later on a question arose again, I believe in six precincts, and there was some argument, of which I only heard parts, relating to those six precincts.

Q. These six precincts do not designate the particular ballot they wanted, did they, as you recollect it? Do they relate to any particular ballots, or did they?

Mr. FEIGENBAUM. The records show that.

A. I understood there was no designation of particular ballots; but I remember an objection made by you at the time that it was the duty of contestant to have made his claim while the ballot boxes were open and before they were——

Q. And to indicate what ballots they desired?—A. And to indicate what ballots they desired, before the ballots were sealed up and the boxes were returned to the vault.

Q. Now, Mr. Hawes, is there anything else that I have overlooked that has occurred to you?—A. No; excepting, Mr. Barrett, excepting the amusing reference of Mrs. Caulfield to the fact that dinner was brought in for myself and Mr. Dempsey. I never took dinner in the board room at all, so she must have been mistaken.

Q. Your dinners and meals during the course of this contest were invariably taken with Mr. Cummings and myself?—A. I dined with you every evening, and Mr. Cummings, and went over the thing.

Mr. BARRETT. That is all.

Mr. FEIGENBAUM. I just want to ask one question of Mr. Bogy.

Mr. BARRETT. Do you want to ask Mr. Hawes anything?

Mr. FEIGENBAUM. No; not a question.

(Signature waived by agreement.)

BERNARD P. BOGY, having been heretofore duly sworn and testified, was recalled by contestant and testified further on behalf of the contestant as follows:

Direct examination by Mr. FEIGENBAUM:

Q. Mr. Bogy, regarding any statement or utterances of yours with reference to your attitude towards the Irish Republic, did you ever intimate in any way that you were for any other republic or any other Government before that of America? If so, state it; and if not, please so state.—A. Absolutely not. My only utterance was this: That according to the fourteen points that were agreed upon at the peace conference at Versailles, the chief peoples of the world were to have a right to determine for themselves as to what form of government they should live under, and who their rulers should be; and as we have recognized the right of the people of Hedjaz, which had been a Turkish possession, and Turkey and the United States not having been at war, I certainly thought that we ought to give the same recognition to the people of Ireland, an English possession, we not having been at war with England; that I thought the people of Ireland should have the same right as other peoples; but in no instance have I ever intimated in any way that any country or people's rights should have precedence over that of my own country, the United States of America, which is always first with me and always will be until the day of my death.

Maj. HAWES. I hope I was not misunderstood in any attack upon Mr. Bogy's Americanism. It was just a distinction between how far he would go in the recognition of the Irish Republic and how far I would go. It was not intended as any reflection upon Mr. Bogy whatsoever.

(Signature waived by agreement.)

Mr. FEIGENBAUM. Let me ask you, Maj. Hawes, to the best of your recollection was the notary, Mr. Frank B. Grodzki, present during the entire period of the recount in the election commissioners' office?

A. To the best of my recollection, he was.

Mr. FEIGENBAUM. That is all.

Now, Mr. Notary, I want to hand you notice of no testimony for contestee, signed by contestee and his counsel, together with the affidavit of Peter T. Barrett, making proof of service on contestant of a copy of this notice. which I now hand to the notary and ask that it be incorporated in the record of both contestant and contestee.

Said paper marked "Exhibit M," offered in evidence by the contestant, is in words and figures as follows, to wit:

CONTESTANT'S EXHIBIT M.

Notice of no testimony for contestee. Bernard P. Bogy, contestant, *v.* Harry B. Hawes, contestee. Before the House of Representatives of the Sixty-seventh Congress of the United States.

To Bernard P. Bogy, the above-named contestant and his attorney of record:

You are hereby notified that I intend to take no testimony, and shall not take any testimony, of witnesses or any evidence for the purpose of using any testimony or evidence in the pending election contest, wherein you are the contestant and I am the contestee, relating to the office of Representative in the Sixty-seventh Congress of the United States from the eleventh district of the State of Missouri, otherwise than what has already, to wit, up to and including January 29, 1921, been taken by you, pursuant to the stipulation between us and our counsel and by depositions before Frank B. Grodzki, notary public for and within the city of St. Louis, Missouri.

Therefore there will be no taking of testimony at the hour of ten (10) o'clock in the forenoon of January 31, 1921, before Frank B. Grodzki, said notary public, at room 900 Times Building, northeast corner of Broadway and Chestnut Streets, in said city of St. Louis and State of Missouri, and no taking of testimony on the part of contestee before said notary or any other officer qualified by law to take testimony in said election contest at any time or at any place. And contestee hereby notified you that the taking of testimony in said contest is herewith finally closed.

Contestee also hereby notifies you that he will have the said notary, Frank B. Grodzki, to certify and forward to Congress, in accordance with the statutes in such cases made and provided and under the rules of the Committee on Elections of the Congress of the United States, a certified copy of contestant's full record, testimony, and exhibits, heretofore taken before said notary by contestant up to and including January 29, 1921, being a true and exact copy in all matters and things as that of contestant; and that I will use said contestant's full and complete record as and for contestee's record in said election contest.

HARRY B. HAWES, *Contestee.*
By CAMPBELL CUMMINGS,
PETER T. BARRETT,
His Attorneys.

STATE OF MISSOURI,
City of St. Louis, ss:

I, Peter T. Barrett, of lawful age, first being duly sworn, on my oath say that I served this notice in the city of St. Louis, State of Missouri, by delivering a true copy thereof to Bernard P. Bogy on the 29th day of January, A. D. 1921.

PETER T. BARRETT.

Subscribed and sworn to before me this 29th day of January, A. D. 1921.

FRANK B. GRODZKI,
Notary Public.

My commission expires September 9, 1921.

Mr. Feigenbaum. We also wish to ask that our notices to take the depositions of witnesses, which I have just presented to the notary, Mr. Frank B. Grodzki, with proper affidavit, and likewise subpœnas showing the return thereon, be incorporated in the record.

The Notary. That will be attached to the record.

Certificate of Notary Public.

State of Missouri,
City of St. Louis:

I, Frank B. Grodski, a notary public within and for the city of St. Louis, State of Missouri, and of the eleventh congressional district of said State, do certify that the foregoing inclosures, consisting of one package, containing the recount of the votes in said eleventh congressional district, taken in pursuance of the stipulation thereunto annexed, under supervision of the board of election commissioners of the city of St. Louis, Mo., by precincts and wards, consisting of five sheets and one sheet of recapitulation, with the certificate of said board attached thereto: One bound book containing the data, memorandum sheets, and ring sheets for each precinct contained in said eleventh congressional district, and made up by the deputy election commissioners at the said recount under the supervision and control of the said board of election commissioners; one bound volume being a certificate copy of the minutes of the official proceedings of the said board of election commissioners, as certified to by them; three bound volumes of the testimony of the witnesses subpœnaed and examined by contestant, together with cross-examination thereof, consisting of one thousand and ninety-two pages, including notices to take depositions, one package containing contestant's notice of contest served on contestee and contestee's answer to said notice of contest, being in all the testimony and proof taken in the city of St. Louis and State of Missouri on behalf of the contestant in the matter of an election contest of Bernard P. Bogy, contestant, *v.* Harry B. Hawes, contestee, under and in pursuance of contestant's said notice of contest, and which were reduced to their present form of inclosures by me and under my supervision and control, and which are now forwarded by me in accordance with the statutes in such cases, made and provided, and under the rules of the committee on elections of the Congress of the United States.

I do further certify that the inclosures herein are correct in the matters and things which they purport to be.

I further certify the legal fees, due from contestant in accordance with the statutes of the State of Missouri, are as follows:

To self, as services for notary, at the rate of fifteen cents per hundred words	$648.00
To self, for 36 certificates and oaths	18.00
To self, for binding and postage advanced	3.00
To Andy Watson Process Serving Co	12.00
To Stenographer H. A. Buck	735.20
(Unpaid) total	1,416.20

Given under my hand and seal this 23rd day of February, 1921.

[seal.]

Frank B. Grodzki,
Notary Public.

My commission as notary public expires September 9, 1921.

NOTICE OF NO TESTIMONY FOR CONTESTEE.

To Bernard P. Bogy, the above-named contestant, and his attorney of record:

You are hereby notified that I intend to take no testimony, and shall not take any testimony, of witnesses or any evidence for the purpose of using any testimony or evidence in the pending election contest, wherein you are the contestant and I am the contestee, relating to the office of Representative in the Sixty-seventh Congress of the United States from the eleventh district of the State of Missouri, otherwise than what has already, to wit, up to and including January 29, 1921, been taken by you, pursuant to the stipulation between us and our counsel and by depositions before Frank B. Grodzki, notary public for and within the city of St. Louis, Missouri.

Therefore there will be no taking of testimony at the hour of ten (10) o'clock in the forenoon of January 31, 1921, before Frank B. Grodzki, said notary public, at room 900 Times Building, northeast corner of Broadway and Chestnut Streets, in said city of St. Louis and State of Missouri, and no taking of testimony on the part of contestee before said notary or any other officer qualified by law to take testimony in said election contest, at any time or at any place. And contestee hereby notifies you that the taking of testimony in said contest is herewith finally closed.

Contestee also hereby notifies you that he will have the said notary, Frank B. Grodzki, to certify and forward to Congress, in accordance with the statutes in such cases made and provided and under the rules of the Committee on Elections of the Congress of the United States, a certified copy of contestant's full record, testimony, and exhibits, heretofore taken before said notary by contestant up to and including January 29, 1921, being a true and exact copy in all matters and things as that of contestant; and that I will use said contestant's full and complete record as and for contestee's record in said election contest.

Harry B. Hawes, *Contestee.*
By Campbell Cummings,
Peter T. Barrett,
His Attorneys.

State of Missouri,
City of St. Louis, ss:

I, Peter T. Barrett, of lawful age, first being duly sworn, on my oath say that I served this notice in the city of St. Louis, State of Missouri, by delivering a true copy thereof to Bernard P. Bogy on the 29th day of January, A. D. 1921.

Peter T. Barrett.

Subscribed and sworn to before me this 29th day of January, A. D. 1921.

Frank B. Grodzki,
Notary Public.

My commission expires September 9, 1921.

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